FILED
021678 MAY 12 2003
OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

FEDERAL ELECTION COMMISSION, ET AL., APPELLANTS

v.

SENATOR MITCH MCCONNELL, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

In March 2002, the President signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. BCRA is designed to address various abuses associated with the financing of federal election campaigns and thereby protect the integrity of the federal electoral process. The questions presented are as follows:

1. Whether the limitations on political parties imposed by Section 101 of BCRA are constitutional.

2. Whether the funding limitations and disclosure requirements imposed by Sections 201 and 203 of BCRA with respect to "electioneering communications" are constitutional.

3. Whether the limitations imposed by Section 213 of BCRA on coordinated expenditures by a political party committee are constitutional.

4. Whether the prohibition imposed by Section 318 of BCRA on contributions to federal candidates or political party committees made by minors is constitutional.

5. Whether the reporting and record-keeping requirements imposed on broadcast stations by Section 504 of BCRA are constitutional.

PARTIES TO THE PROCEEDINGS

This jurisdictional statement is filed on behalf of the following appellants: the Federal Election Commission (FEC) and David W. Mason, Ellen L. Weintraub, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Michael E. Toner, in their capacities as Commissioners of the FEC; John D. Ashcroft, in his capacity as Attorney General of the United States; the United States Department of Justice; the Federal Communications Commission; and the United States of America. Those parties were defendants in the district court (current FEC Commissioners Weintraub and Toner replaced former Commissioners Karl J. Sandstrom and Darryl R. Wold, who were originally named as defendants).

The following parties were intervenor-defendants in the district court: Senator John McCain; Senator Russell Feingold; Representative Christopher Shays; Representative Martin Meehan; Senator Olympia Snowe; and Senator James Jeffords.

The following parties were plaintiffs in the district court: Senator Mitch McConnell; Representative Bob Barr; Representative Mike Pence; Alabama Attorney General Bill Pryor; Libertarian National Committee, Inc.; Alabama Republican Executive Committee, as governing body for the Alabama Republican Party; Libertarian Party of Illinois, Inc.; DuPage Political Action Council, Inc.; Jefferson County Republican Executive Committee; American Civil Liberties Union; Associated Builders and Contractors, Inc.; Associated Builders and Contractors Political Action Committee; Center for Individual Freedom; Christian Coalition of America, Inc.; Club for Growth, Inc.; Indiana Family Institute, Inc.; National Right to Life Committee, Inc.;

National Right to Life Educational Trust Fund; National Right to Life Political Action Committee; National Right to Work Committee; 60 Plus Association, Inc.; Southeastern Legal Foundation, Inc.; U.S. d/b/a ProENGLISH; Martin Connors; Thomas E. McInerney; Barret Austin O'Brock; Trevor M. Southerland; National Rifle Association of America; National Rifle Association Political Victory Fund; Emily Echols, a minor child, by and through her next friends Tim and Wendy Echols; Hannah McDow, a minor child, by and through her next friends Tim and Donna McDow; Isaac McDow, a minor child, by and through his next friends Tim and Donna McDow; Jessica Mitchell, a minor child, by and through her next friends Chuck and Pam Mitchell; Daniel Solid, a minor child, by and through his next friends Kevin and Bonnie Solid; Zachary C. White, a minor child, by and through his next friends John and Cynthia White; Republican National Committee (RNC); Mike Duncan as member and Treasurer of the RNC; Republican Party of Colorado; Republican Party of Ohio; Republican Party of New Mexico; Dallas County (Iowa) Republican County Central Committee; California Democratic Party; Art Torres; Yolo County Democratic Central Committee; California Republican Party; Shawn Steel; Timothy J. Morgan; Barbara Alby; Santa Cruz County Republican Central Committee; Douglas R. Boyd, Sr.; Victoria Jackson Gray Adams; Carrie Bolton; Cynthia Brown; Derek Cressman; Victoria Fitzgerald; Anurada Joshi; Peter Kostmayer; Nancy Russell; Kate Seely-Kirk; Rose Taylor; Stephanie L. Wilson; California Public Interest Research Group; Massachusetts Public Interest Research Group; New Jersey Public Interest Research Group; United States Public Interest Research Group; The Fannie Lou Hamer Project; Association of Community Orga-

nizers for Reform Now; Chamber of Commerce of the United States; National Association of Manufacturers; National Association of Wholesaler-Distributors; U.S. Chamber Political Action Committee; American Federation of Labor and Congress of Industrial Organizations; AFL-CIO Committee on Political Education Political Contributions Committee; Representative Ron Paul; Gun Owners of America, Inc.; Gun Owners of America Political Victory Fund; Real Campaign Reform.Org; Citizens United; Citizens United Political Victory Fund; Michael Cloud; Carla Howell; Representative Bennie G. Thompson; Representative Earl F. Hilliard; and National Association of Broadcasters.

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinions of the district court are not yet reported. See App., *infra*, 9a.

JURISDICTION

The judgment of the district court was entered on May 2, 2003. Notices of appeal (App., *infra*, 1a-6a, 7a-8a) were filed by the Federal Election Commission on May 2, 2003, and by the other appellants on May 5, 2003. The jurisdiction of this Court is invoked under the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, § 403(a)(3), 116 Stat. 113-114.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article I, Section 4, Clause 1 of the United States Constitution is reproduced at App., *infra*, 10a.

2. The First Amendment to the United States Constitution is reproduced at App., *infra*, 11a.

3. The Fifth Amendment to the United States Constitution is reproduced at App., *infra*, 12a.

4. The Tenth Amendment to the United States Constitution is reproduced at App., *infra*, 13a.

5. The Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81, is reproduced at App., *infra*, 14a-49a.

STATEMENT

This case presents a facial challenge to the constitutionality of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. A three-judge panel of the District Court for the District of Columbia held that several provisions of BCRA violate the First Amendment to the Constitution. Congress has vested this Court with direct appellate jurisdiction over the district court's decision. See BCRA § 403(a)(3).

1. "[T]he history of federal campaign finance regulation, having its origins in the Administration of President Theodore Roosevelt, is a long-standing and recurring problem that has challenged our government for nearly half of the life of our Republic." Per Curiam op. 16; see Kollar-Kotelly op. 6 ("over the course of the last century, the political branches have endeavored to protect the integrity of federal elections with carefully tailored legislation addressing corruption or the appearance of corruption inherent in a system of donor-financed campaigns"). This Court has previously canvassed the history of such regulation and has repeatedly recognized Congress's authority to protect the integrity of federal elections and prevent corruption of federal office-holders. See, *e.g.*, *FEC* v. *Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431 (2001) (*Colorado II*); *FEC* v. *National Right to Work Comm.*, 459 U.S. 197 (1982) (*NRWC*); *Buckley* v. *Valeo*, 424 U.S. 1 (1976) (per curiam); *Pipefitters Local Union No. 562* v. *United States*, 407 U.S. 385 (1972); *United States* v.

Automobile Workers, 352 U.S. 567 (1957); *United States* v. *CIO*, 335 U.S. 106 (1948). In particular, Congress has sought to eliminate the actual and apparent corruption associated with unrestricted political fundraising and spending, in order "to sustain the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government." *Automobile Workers*, 352 U.S. at 575; see *NRWC*, 459 U.S. at 208-209.

As the district court explained (Per Curiam op. 16-42), the history of Congress's efforts to ensure the integrity of the federal electoral process has followed a pattern of congressional action to respond to particular electoral abuses; attempts by those in the regulated community to circumvent the limitations established by the applicable regulatory scheme; and congressional action to "plug [an] existing loop-hole." *Automobile Workers*, 352 U.S. at 582. After years of deliberation and debate, Congress enacted BCRA in response to "burgeoning problems with federal campaign finance laws." Per Curiam op. 42. In crafting that legislation, Members of Congress drew upon their own unique experience and familiarity with the problems to which BCRA is addressed as central participants in the federal campaign system.

2. a. BCRA amends the Federal Election Campaign Act of 1971 (FECA), 2 U.S.C. 431 *et seq.*, which regulates the financing of federal election campaigns. FECA was intended to reduce "the actuality and appearance of corruption" resulting from the "opportunities for abuse inherent in a regime of large individual financial contributions." *Buckley*, 424 U.S. at 26-27. Before BCRA was enacted, FECA's central features included limitations on the amounts that individuals and political committees could contribute to candidates for

federal office, political party committees, and independent political committees. See 2 U.S.C. 441a(a)(1)-(4), 441a(d) (2000).[1] FECA also continued in effect longstanding prohibitions against the use of general treasury funds by corporations and labor unions for the purpose of influencing federal elections. See 2 U.S.C. 441b (2000).[2] In addition, FECA included a variety of

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[1] Before BCRA was enacted, individuals were permitted to contribute up to $20,000 to any national political party committee and up to $5000 to any other political committee in any calendar year, and up to $1000 per election to any candidate for federal office, with an overall annual limit of $25,000 by any contributor. 2 U.S.C. 441a(a)(1) (2000). Under BCRA, those limits have been increased to $25,000 per year to any national political party committee, $10,000 per year to any state party committee, and $2000 per election to any federal candidate. See BCRA §§ 102, 307. The overall annual limit is now $37,500 per election cycle for contributions to candidates and $57,500 for other contributions (of which not more than $37,500 may be attributable to contributions to political committees that are not national party committees). See BCRA § 307. BCRA also provides that most of the current contribution limits are indexed for inflation. See BCRA § 307(d); Henderson op. 339. One set of plaintiffs in this litigation challenged the constitutionality of the increased contrbution limits, but the district court held that the plaintiffs lacked standing. See Per Curiam op. 11, 15; Henderson op. 338-342.

[2] In 1907, Congress first prohibited any corporation from making a "money contribution" in connection with federal elections. Tillman Act, ch. 420, 34 Stat. 864-865. Congress later extended the prohibition on corporate contributions to "anything of value." Federal Corrupt Practices Act, 1925 (FCPA), ch. 368, §§ 302, 318, 43 Stat. 1071, 1074. The FCPA also made it a crime for a candidate to accept corporate contributions. 43 Stat. 1074. In 1943, temporary wartime legislation extended the proscription against corporate campaign contributions to labor organizations. Smith-Connally Act, ch. 144, § 9, 57 Stat. 167-168; see *Automobile Workers*, 352 U.S. at 578. The Taft-Hartley Act of 1947, ch. 120, § 304, 61 Stat. 159, again amended the FCPA "to proscribe any 'expenditure' as well as 'any contribution' [and] to make permanent [the

recordkeeping and disclosure requirements that were intended to inform the electorate, deter corruption, and facilitate detection of violations of the contribution and expenditure limits. See 2 U.S.C. 432-434 (2000). Congress also established the Federal Election Commission (FEC) to administer and enforce FECA. See generally 2 U.S.C. 437c(b)(1), 437d(a), 437g (2000).

b. "In the area of campaign finance regulation, congressional action has been largely incremental and responsive to the most prevalent abuses or evasions of existing law at particular points in time." Kollar-Kotelly op. 6; see Per Curiam op. 16-42 (reviewing Congress's incremental approach to campaign-finance regulation); *NRWC*, 459 U.S. at 209 (discussing Congress's "cautious," "step by step" approach). In enacting BCRA, Congress sought principally to address (1) the acceptance and use by political parties of "soft money" (*i.e.*, money raised outside the framework of FECA's disclosure requirements and source and amount limits) for the purpose of influencing federal elections; and (2) the growing use of corporate and union general treasury funds for communications designed to influence, and generally known to influence, the outcome of federal elections. "Broadly speaking, Title I [of BCRA] attempts to regulate political party use of nonfederal funds, while Title II seeks to prohibit

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FCPA's] application to labor organizations." *Automobile Workers*, 352 U.S. at 582-583. FECA permitted corporations and unions to establish and administer separate, segregated accounts for the purpose of making political contributions and expenditures using funds collected from stockholders, members, executive and administrative personnel, and their families. See *Pipefitters Local Union No. 562* v. *United States*, 407 U.S. 385, 387, 409-410 (1972). Although BCRA added new restrictions on certain "electioneering" activities of corporations and labor unions, it left the basic prohibitions on corporate and union treasury contributions unaffected.

labor union and corporate treasury funds from being used to run issue advertisements that have an ostensible federal electioneering purpose." Per Curiam op. 50.

i. Before BCRA was enacted, application of FECA's disclosure requirements and source and amount limitations to funds received by a national or state political party turned on whether the relevant funds were used "for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A)(i) (2000). Political parties were permitted to raise and spend soft money for activities intended to influence the nomination or election of candidates for state or local office. With respect to various "party-building" activities (*e.g.*, get-out-the-vote drives, or generic party advertising), which could be expected and presumably were intended to influence the outcome of both federal and non-federal elections, prior FEC regulations established allocation formulas specifying the extent to which soft money could be used. See generally 11 C.F.R. 106.5 (2002) (expired) (providing for allocation of expenses between federal and non-federal accounts).[3]

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[3] From 1990 until the recent promulgation of new regulations implementing BCRA, FEC rules required party committees that chose to establish federal accounts to allocate a portion of their "[a]dministrative expenses" (11 C.F.R. 106.5(a)(2)(i) (2002)) and expenses for "[g]eneric voter drives," which included "voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate." 11 C.F.R. 106.5(a)(2)(iv) (2002). National party committees were required to allocate at least 65% of those expenses to federal accounts during presidential election years, and at least 60% in non-presidential election years. 11 C.F.R. 106.5(b) and (c) (2002). For state and local parties, the allocation was determined by the proportion of

In recent years, however, soft money contributions to political parties have increased dramatically. Soft money has been used, *inter alia*, to purchase advertisements that have featured federal candidates but have not expressly advocated a particular electoral result. See Per Curiam op. 38. The parties have paid for such advertisements "with a mix of federal and nonfederal funds as permitted by FEC allocation rules." *Ibid.* Under the pre-BCRA regime, national party funds were often transferred to state parties for use in such activities because FEC regulations established more favorable allocation formulas (*i.e.*, permitted greater use of soft money) for state than for national party committees. See *id.* at 38-39. Congress ultimately concluded that the effect of such practices was to enable corporations, labor unions, and wealthy individuals to make unlimited and unreported contributions to political parties that were in turn used to benefit federal candidates, thus reintroducing the "opportunities for abuse inherent in a regime of large * * * financial contributions" that FECA was intended to foreclose. *Buckley*, 424 U.S. at 27.

Congress enacted Title I of BCRA to address the opportunities for real or apparent corruption presented when donors make contributions to political parties in amounts that exceed FECA's contribution limits, and the problems caused by the growing use of soft money for activities that are designed and generally known to influence federal elections. BCRA § 101(a) adds a new FECA § 323 (to be codified at 2 U.S.C. 441i). New FECA § 323 consists of several interrelated provisions that work together to ensure "that national parties, federal officeholders and federal candidates use only

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federal offices to all offices on the state's general election ballot. See 11 C.F.R. 106.5(d) (2002).

funds permitted in federal elections to influence federal elections, and that state parties stop serving as vehicles for channeling soft money into federal races to help federal candidates." 147 Cong. Rec. S3251 (daily ed. Apr. 2, 2001) (Sen. Thompson).

New FECA § 323(a)(1) provides that "[a] national committee of a political party (including a national congressional campaign committee of a political party) may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of [the FECA]." Under new FECA § 323(a)(2), that ban applies to the national committee itself and to "any officer or agent acting on behalf of such a national committee, and any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee." "The clear import of [Section 323(a)] is that national party committees are banned from any involvement with nonfederal money." Per Curiam op. 58. BCRA imposes no limits on how the national party committees may spend their money; it simply requires that all national party funds must be raised in accordance with the longstanding disclosure requirements and source and amount limitations imposed by FECA.

New FECA § 323(b) addresses the use of soft money by state and local party committees. Section 323(b)(1) provides as a general rule that any disbursements made by a state, district, or local committee of a political party for "Federal election activity" must "be made from funds subject to the limitations, prohibitions, and reporting requirements of FECA]." The term "Federal election activity" is defined to include (i) voter registration activity within the 120 days before a federal

election; (ii) get-out-the-vote and similar generic campaign activities "conducted in connection with an election in which a candidate for Federal office appears on the ballot"; (iii) any "public communication that refers to a clearly identified candidate for federal office * * * and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office"; and (iv) all services provided by any employee who devotes more than 25% of his compensated time to activities in connection with federal elections. See BCRA § 101(b) (adding FECA § 301(20)(A)(i)-(iv)). New FECA § 323(b)(2)—known as the "Levin Amendment"—establishes exceptions to that general rule, authorizing state-level party committees to use soft money in limited amounts, raised under certain restrictions, to fund an allocated portion of specified activities that affect both federal and state elections. See Per Curiam op. 58-59.

New FECA § 323(d) prohibits political party committees from soliciting any funds for, or making or directing any donations to, certain organizations described in Sections 501(c) and 527 of the Internal Revenue Code (26 U.S.C.). See Per Curiam op. 60-61. New FECA § 323(e)(1)(A) generally prohibits federal candidates and officeholders from soliciting, receiving, directing, transferring, or spending any soft money in connection with an election for federal office. Per Curiam op. 61. New FECA § 323(e)(1)(B) permits federal candidates to raise money in connection with state and local elections, but only in amounts that do not exceed federal contribution limits and only from sources that are permitted to donate to federal campaigns. Per Curiam op. 61-62. Federal candidates and officeholders are permitted to attend fundraising events for state, district, or local committees of a politi-

cal party and to make certain solicitations on behalf of nonprofit organizations. See FECA § 323(e)(2)-(4); Per Curiam op. 62. Finally, new FECA § 323(f) prohibits any state or local officeholder, or any candidate for such office, from spending soft money for a "public communication that 'refers' to a clearly identified candidate for federal office * * * and 'promotes,' 'supports,' 'attacks,' or 'opposes' a candidate for that office." Per Curiam op. 63.

ii. Title II of BCRA addresses the escalating use of union and corporate treasury funds for broadcast advertising that, while clearly intended to influence the outcome of federal elections, escaped federal regulation under the prior legal regime. Federal law has long prohibited corporations and labor unions from spending general treasury funds to influence federal elections. See p. 4 & note 2, *supra*; 2 U.S.C. 441b (2000). This Court, however, has interpreted both FECA's prohibition of corporate and union spending on federal elections (see 2 U.S.C. 441b (2000)) and FECA's requirements for disclosure of independent political expenditures (see 2 U.S.C. 434(c) (2000)) to apply only to communications that expressly advocate the election or defeat of a candidate for federal office—*i.e.*, those using so-called "magic words" such as "vote for," "elect," "defeat" or "reject." See *Buckley*, 424 U.S. at 44 n.52; *FEC* v. *Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 249 (1986) (*MCFL*). In recent years, corporations and unions have made increasing use of so-called "issue advocacy" campaigns, disseminating advertisements that praise or denounce a candidate for federal office but do not in express terms urge his election or defeat. See Per Curiam op. 41-42. Because those advertisements do not include words of express

advocacy, the expenditures used to finance them escaped regulation under FECA.

Subtitle A of Title II of BCRA reflects Congress's effort to identify more precisely those advertisements that are intended to influence federal elections, by defining a new category of "electioneering communications" in a manner that does not depend on the use of "magic words" of express advocacy. New FECA § 304(f)(3)(A)(i) (added by BCRA § 201(a)) defines the term "electioneering communication" to mean a television or radio communication that "refers to a clearly identified candidate for Federal office"; is made within the 60 days before the federal general election, or the 30 days before the federal primary election, in which the identified candidate is running; and is "targeted to the relevant electorate" (*i.e.*, it can be received by at least 50,000 persons in the State or district where the election is to be held). See Per Curiam op. 63-64. BCRA also includes a backup definition of the term "electioneering communication," to be used in the event that the primary definition is held to be unconstitutional. Under the backup definition, "the term 'electioneering communication' means any broadcast, cable, or satellite communication which promotes or supports a candidate for [federal] office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate." BCRA § 201(a) (adding FECA § 304(f)(3)(A)(ii)); see Per Curiam op. 64-65.

BCRA § 203(a) amends FECA § 316(b)(2) (2 U.S.C. 441b(b)(2)) to provide that corporate and labor union general treasury funds may not be used to finance

"electioneering communications" as defined in BCRA. See Per Curiam op. 65. "The prohibition on electioneering communications only applies to the general treasury funds of national banks, corporations, and labor unions, or any other person using funds donated by these entities." *Ibid.* Because BCRA does not alter the pre-existing FECA provisions that allow corporations and labor unions to use funds from separate segregated accounts (or "PACs") for the purpose of influencing federal elections, such funds may lawfully be used to sponsor electioneering communications. See 2 U.S.C. 441b(b)(2)(C) and (4) (2000); Per Curiam op. 65-66; see also *NRWC*, 459 U.S. at 200 n.4 (a "separate segregated fund may be completely controlled by the sponsoring corporation or union").[4]

New FECA § 304(f)(1)-(2) (added by BCRA § 201(a)) requires that any person who spends more than $10,000 on electioneering communications in a calendar year must file statements with the FEC that, *inter alia*, identify the persons making the disbursements, those

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[4] FECA permits unions and corporations to use treasury funds to establish and administer "separate segregated fund[s] to be utilized for political purposes." 2 U.S.C. 441b(b)(2)(C) (2000); see note 2, *supra*. Such a fund (commonly called a "PAC") is a political committee under FECA. See 2 U.S.C. 431(4)(B) (2000). The fund can solicit and receive voluntary contributions (subject to the source and amount limits imposed by FECA) from corporate employees and stockholders, from union members, from members of a membership corporation, and from their families. 2 U.S.C. 441b(b)(4)(A)-(C) (2000). Those funds can be contributed to federal candidates (subject again to FECA's contribution limits) or used to pay for independent expenditures or electioneering communications. Corporations and unions may also use treasury funds to finance communications on any subject with their stockholders, executive and administrative personnel, and their "members." 2 U.S.C. 431(9)(B)(iii), 441b(b)(2) (2000); see Per Curiam op. 65-66.

to whom the disbursements were made, and the persons who contributed $1000 or more to the persons making the disbursement. New FECA § 304(f)(5) (added by BCRA § 201(a)) provides that "[f]or purposes of this subsection, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement."

iii. Title II of BCRA also addresses the treatment of campaign expenditures that are coordinated between candidates and their political parties. FECA has long treated such expenditures as contributions, see 2 U.S.C. 441a(a)(7)(B)(i) (2000); see also Henderson op. 244, which are subject to the same source and amount limitations that apply to any other contribution. Under FECA, however, political party committees are permitted to make coordinated expenditures in amounts substantially greater than the limits that apply to other donors. Thus, while other multi-candidate political committees can contribute no more than $5000 per election to a candidate, see 2 U.S.C. 441a(a)(2)(A) (2000), party committees are permitted to make contributions in the form of coordinated expenditures that far exceed that limit, see 2 U.S.C. 441a(d) (2000); *Colorado Republican Fed. Campaign Comm.* v. *FEC*, 518 U.S. 604, 610-611 (1996) (opinion of Breyer, J.) (*Colorado I*).[5] Under this Court's decision in *Colorado*

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[5] National and state party committees are permitted to make coordinated expenditures of up to two cents multiplied by the voting age population of the United States for a Presidential candidate; the greater of $20,000 or two cents multiplied by the voting age population of a State for the State's candidate for Senator, and $10,000 for a candidate for Representative. See 2 U.S.C. 441a(d)(2)-(3) (2000). Those limits are adjusted each year for inflation. 2 U.S.C. 441a(c) (2000). In the year 2000, the limits on those additional coordinated expenditures ranged from $33,780 to $67,560 for House of Representative races and, for Senate races,

I, political party committees have a First Amendment right to make unlimited independent expenditures to support their candidates. See *id.* at 608, 618 (opinion of Breyer, J.); see also *id.* at 627-631 (opinion of Kennedy, J.); *id.* at 644-648 (opinion of Thomas, J.).

BCRA § 213 alters the range of spending options available to a party committee once the party has nominated a candidate for a particular federal election. Under Section 213, the party must choose, for the remainder of the election cycle, either (1) to forgo independent expenditures in support of that candidate, while remaining subject to the increased coordinated-expenditure limits applicable to political parties under 2 U.S.C. 441a(d) (2000); or (2) to make unlimited independent expenditures in support of that candidate, while abiding by the $5000 limit on contributions and coordinated expenditures applicable to all other multicandidate political committees.

BCRA § 214(a) provides that expenditures made in coordination with political party committees will be treated as contributions to the party. Section 214(a) parallels pre-existing FECA provisions under which expenditures made in coordination with candidates are treated as contributions to the candidate. See Per Curiam op. 74-75; p. 13, *supra*. BCRA § 214(b) repeals pre-existing FEC regulations concerning coordinated communications that are paid for by persons other than candidates or parties, and BCRA § 214(c) directs the

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from $67,560 to $1.6 million. See *Colorado II*, 533 U.S. at 439 n.3. The FEC interprets Section 441a to permit national and state political parties to make direct contributions to a candidate of up to $5000 (the limit applicable to contributions by political committees generally under Section 441a(a)) in addition to the coordinated expenditures authorized by Section 441a(d). See, *e.g.*, 11 C.F.R. 110.7(b)(3) (2002).

FEC to promulgate new regulations on the subject that "shall not require agreement or formal collaboration to establish coordination." See Per Curiam op. 75.

iv. BCRA § 318 prohibits individuals who are less than 18 years old from making contributions to candidates or political party committees. See Per Curiam op. 79.

v. BCRA §§ 305 and 504 amend Section 315 of the Communications Act of 1934, 47 U.S.C. 315. The Communications Act requires stations to sell broadcast time to a candidate at the "lowest unit charge" during the 45-day period before a federal primary election or the 60-day period before a federal general election. 47 U.S.C. 315(b)(1).[6] Under BCRA § 305, a candidate is entitled to obtain the "lowest unit charge" only if he satisfies one of two requirements. First, the candidate may certify in writing that neither he nor any authorized committee will make any "direct reference to another candidate for the same office" during the broadcast advertisement. BCRA § 305(a)(3) (adding 47 U.S.C. 315(b)(2)(A)). Alternatively, "[t]he candidate can be exempted from this provision, and thus be eligible for the lowest unit charge without such a promise, if the candidate clearly identifies himself at the end of the broadcast and states that he approves of the broadcast." Per Curiam op. 77; see BCRA § 305(a)(3) (adding 47 U.S.C. 315(b)(2)(C) and (D)).

BCRA § 504 requires a broadcast station to maintain and make publicly available a complete record of requests to purchase broadcast time "made by or on behalf of a legally qualified candidate for public office"

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[6] The "lowest unit charge" provision was added to the Communications Act, 47 U.S.C. 315, in 1972 as part of FECA. See *Miller* v. *FCC*, 66 F.3d 1140, 1142 (11th Cir. 1995), cert. denied, 517 U.S. 1155 (1996).

or to broadcast a "message relating to any political matter of national importance," including "a legally qualified candidate," "any election to Federal office," or "a national legislative issue of public importance." BCRA § 504 (adding 47 U.S.C. 315(e)(1)). The record created by the licensee must include "the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person." BCRA § 504 (adding 47 U.S.C. 315(e)(2)).

3. Pursuant to BCRA § 403(a), a variety of individuals, party committees, interest groups, and others filed 11 separate lawsuits, alleging that BCRA on its face violates the First, Fifth, and Tenth Amendments to the Constitution. The FEC, the individual FEC Commissioners, the Federal Communications Commission, the Department of Justice, and the Attorney General were named as defendants. The United States intervened as a defendant to defend the constitutionality of BCRA. The principal sponsors of BCRA also were granted leave to intervene as defendants.

After extensive discovery was completed, the three-judge district court upheld some provisions of the statute; found that some of the constitutional challenges were nonjusticiable, and invalidated other BCRA provisions and enjoined their enforcement and application. The district court issued a per curiam opinion that summarized the court's disposition of the various constitutional challenges (see Per Curiam op. 5-15); discussed the history of federal campaign finance regulation (*id.* at 16-42); described the provisions of the BCRA (*id.* at 42–80); set forth findings of fact (*id.* at 80-106) and announced conclusions of law with respect to some of the constitutional claims, chiefly those in-

volving BRCA's disclosure provisions (*id.* at 106-170). In addition, each member of the panel (Circuit Judge Henderson and District Judges Kollar-Kotelly and Leon) filed a separate opinion.[7]

a. With respect to the principal provisions of Title I, the district court invalidated in significant respects BCRA's restrictions on the solicitation and use of soft money by national and state political parties. Judge Kollar-Kotelly would have upheld those provisions; Judge Henderson would have struck them down in their entirety. See Per Curiam op. 5-6, 12; Henderson op. 258-305; Kollar-Kotelly op. 478-609.

Judge Leon, whose vote was controlling (Per Curiam op. 6; cf. note 7, *supra*), concluded that those restrictions were unconstitutional except as applied to "Section 301(20)(A)(iii) activities"—*i.e.*, to any "public communication that refers to a clearly identified candidate for federal office * * * and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office." BCRA § 101(b) (adding FECA § 301(20)(A)(iii)). Judge Leon found that state and national parties could permissibly be barred from using soft money to pay for such communications because "Section 301(20)(A)(iii) * * * describes conduct which is targeted exclusively at federal elections and which directly affects federal elections." Leon op. 44; see *id.* at 44-45, 50-68. Judge Leon concluded, however, that

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[7] Judge Kollar-Kotelly found only three of the challenged provisions (BCRA §§ 213, 318, 504), which she described as "not central to [BCRA's] core mission," to be unconstitutional. See Kollar-Kotelly op. 11. Judge Henderson, by contrast, expressed the view that BCRA "is unconstitutional in virtually all of its particulars." Henderson op. 5. Thus, with respect to the disposition of most of the constitutional claims before the district court, Judge Leon's opinion proved to be controlling.

BCRA's restrictions on the acceptance and use of soft money by national and state parties were otherwise invalid, on the ground that Congress lacks constitutional authority "to regulate nonfederal funds used for nonfederal and mixed purposes." *Id.* at 26; see *id.* at 45-50.

b. With respect to Title II's prohibition on the use of corporate and union general treasury funds to finance "electioneering communications," the district court again adopted an intermediate position, and Judge Leon's views were again controlling. Judge Kollar-Kotelly and Judge Leon agreed that "the record before the Court clearly demonstrates that * * * the evolving present use of issue advertisements, specifically the use of 'issues' to cloak supportive or negative advertisements clearly identifying a candidate for federal office, threaten[s] the purity of elections." Per Curiam op. 135 (internal quotation marks omitted). Judge Kollar-Kotelly would have sustained the expenditure prohibition under either the primary or the backup definition of the term "electioneering communication." See *id.* at 8-9, 12-13; Kollar-Kotelly op. 356-455. Judge Henderson would have found the expenditure ban invalid under either definition. See Per Curiam op. 8-9, 12-13; Henderson op. 201-228.

Judge Leon found the primary definition of "electioneering communication," and the attendant ban on the use of corporate and union general treasury funds to finance "electioneering communications" as so defined, to be unconstitutionally overbroad. Judge Leon based that conclusion on his view that the communications covered by the primary definition include a significant number of "genuine issue advertisements" that are not aimed at influencing electoral results. Leon op. 75; see *id.* at 73-87. At the same time, how-

ever, Judge Leon concluded that the backup definition of "electioneering communication" is for the most part constitutional because it "requires as a link between the identified federal candidate and his election to that office, certain language the purpose of which is advocacy either for, or against, the candidate." *Id.* at 88. He explained that large expenditures for communications falling within that definition can be expected to "give rise to a public perception that the candidate is being directly benefitted and will naturally reciprocate." *Id.* at 90.

Judge Leon determined, however, "that the backup definition's final clause, which requires the message to be 'suggestive of no plausible meaning other than an exhortation to vote,' is unconstitutionally vague." Leon op. 93. Finding that the final clause "can be excised without rewriting the entire definition" (*id.* at 94), Judge Leon upheld the backup definition as so modified. Judge Kollar-Kotelly "concur[red] in that conclusion solely as an alternative to [the district court's] finding that the primary definition is unconstitutional." Per Curiam op. 8. Thus, the effect of the district court's decision was to sustain BCRA's prohibition on the use of corporate and union general treasury funds for "electioneering communications," with that term defined to mean "any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate)."

c. The district court held that BCRA § 318, which prohibits persons less than 18 years old from making contributions to federal candidates or to political parties, is unconstitutional. See Per Curiam op. 11, 15. Each of the panel members found that minors have a

presumptive First Amendment right to engage in political expression, and that the government had failed to produce sufficient evidence that minors would otherwise be used to circumvent statutory limits on adult contributors. See Henderson op. 326-333; Kollar-Kotelly op. 610-613; Leon op. 106-111. The district court also struck down the record-keeping and disclosure requirements imposed upon broadcast stations by BCRA § 504. See Per Curiam op. 11-12, 15. The panel members found that the government had failed to demonstrate a public interest sufficient to justify the burdens that Section 504 places upon broadcasters and on those who purchase political advertisements. See Henderson op. 234-238; Kollar-Kotelly op. 614; Leon op. 111-115.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

Congress vested this Court with appellate jurisdiction to review district court decisions in suits challenging the constitutionality of BCRA. See BCRA § 403(a)(3). This case falls squarely within the Court's appellate jurisdiction under Section 403(a)(3). Congress further directed this Court to "expedite to the greatest possible extent the disposition of" any appeal taken under the statute. BCRA § 403(a)(4).

This Court "has never * * * doubted" the importance of the government interest in protecting federal elections from the threat of "real or apparent corruption" stemming from the creation or suggestion of political debts. *First Nat'l Bank* v. *Bellotti*, 435 U.S. 765, 788 n.26 (1978); see *FEC* v. *National Right to Work Comm.*, 459 U.S. 197, 207, 209-210 (1982) (*NRWC*); *Automobile Workers*, 352 U.S. at 570, 575. In invalidating key provisions of BCRA, the district court substituted its own judgment for that of Congress, which has first-hand experience with the electoral process and

a unique understanding of the concerns to which campaign finance laws are addressed. Those holdings plainly warrant this Court's review.

1. a. The district court held that the soft money restrictions imposed on national political party committees by new FECA § 323(a), and on state and local party committees by new FECA § 323(b), are valid only insofar as they require the use of federally-regulated funds to finance any "public communication that refers to a clearly identified candidate for Federal office * * * and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office." See BCRA § 101(b) (adding FECA § 301(20)(A)(iii)). Judge Leon, whose vote and analysis were controlling (see pp. 17-18, *supra*), found that narrowing of the statute to be constitutionally required on the ground that Congress's authority in this area is limited to party expenditures that directly and *exclusively* affect federal elections. In Judge Leon's view, Congress lacks power to regulate a party committee's acquisition of funds "used for nonfederal and mixed purposes." Leon op. 26.

That holding is both novel and erroneous. With respect to national party committees, Congress reasonably concluded that, given the pervasive connections between party organizations and federal office-holders, large unregulated contributions to the national parties would have the inherent tendency to cause actual or apparent corruption within the federal government, regardless of the manner in which the relevant funds were ultimately spent. See Kollar-Kotelly op. 512-513 ("federal officeholders and candidates control the national party committees and are so deeply involved in raising non-federal funds for the national party committees that there is no meaningful separation between

the national committees and the federal candidates and officeholders that control them."); *id.* at 524 (evidence in this case demonstrates that major donors of soft money to national political parties "are provided access to federal officeholders and candidates in exchange for their large contributions"). Congress also had ample basis for concluding that funds raised by national parties are *predominantly* used for activities that affect federal elections, even though occasional national party expenditures might be directed to state elections only. See *id.* at 550-551.

With respect to state party committees, Congress prohibited the use of soft money only for "Federal election activity," see FECA § 323(b)(1) (added by BCRA § 101(a)), and it carefully limited the definition of that term to specified categories of party activities that can reasonably be expected to influence the outcome of federal elections, see FECA § 301(20)(A)(i)-(iv) (added by BCRA § 101(b)). It is doubtless true that the activities described in new FECA § 301(20)(A)(i), (ii), and (iv) can be expected to influence the outcome of state elections as well. But nothing in this Court's precedents supports Judge Leon's novel conclusion that Congress lacks constitutional authority to regulate the collection of funds used for those state party activities, such as voter registration or get-out-the-vote drives, that can be expected to influence *both* federal *and* state elections. Indeed, the FEC has long required that various "generic" party activities must be funded in part by money raised in accordance with FECA limitations, precisely because such activities can be expected to influence the outcome of federal elections. See note 3, *supra*. Although the FEC has allowed party committees to use soft money to pay a portion of those

costs, this Court's decisions do not suggest that the FEC's allocation regime is constitutionally compelled.

b. The district court also erred in invalidating new FECA § 323(d) (added by BCRA § 101(a)), which prohibits party committees from making solicitations for, and donations to, certain tax-exempt organizations. See Henderson op. 306-315; Leon op. 68-71. Those restrictions on efforts to channel funds to tax-exempt organizations are an appropriate means of combating circumvention of BCRA's soft money restrictions and FECA's contribution limitations and disclosure requirements. As Judge Kollar-Kotelly explained in dissenting on this issue, "[i]t is clear that political parties and candidates have used tax-exempt organizations to assist them in their efforts to win federal elections. Given this fact, and the fact that BCRA prohibits state and national political parties from using nonfederal funds to affect federal elections, the attractiveness of using these tax-exempt proxies would become even more attractive to the political parties if nothing had been done by Congress to address this obvious circumvention route." Kollar-Kotelly op. 561 (citation omitted). Congress properly acted to prevent such circumvention, and this Court has repeatedly honored similar anti-circumvention rationales. See, *e.g.*, *Colorado II*, 533 U.S. at 457 n.19.

2. a. The district court erred in invalidating BCRA § 201's primary definition of the term "electioneering communication," as well as BCRA § 203's ban on the use of union and corporate general treasury funds for "electioneering communications" as so defined. See pp. 18-19, *supra*. Under established constitutional principles, corporations and unions may be prohibited from using general treasury funds to make independent expenditures for the purpose of influencing electoral

results, at least so long as they retain the option of establishing separate segregated funds to finance such communications. See, *e.g.*, *Austin* v. *Michigan Chamber of Commerce*, 494 U.S. 652, 657-661 (1990).[8] Such restrictions on corporate and union spending serve both to prevent the creation of political "debts" and the resulting actual or apparent corruption of office-holders, and to protect individuals who have paid money to the corporation or union for reasons unrelated to support of political candidates. See Kollar-Kotelly op. 357-358; *Austin*, 494 U.S. at 658-660.

Insofar as it prohibits the use of corporate and union general treasury funds for communications intended to influence federal elections, BCRA breaks no new

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[8] This Court has held that 2 U.S.C. 441b's longstanding ban on federal campaign expenditures from corporate treasuries cannot constitutionally be applied to a so-called "*MCFL* corporation" (or "qualified nonprofit corporation," see 11 C.F.R. 114.10(c) (2002))—*i.e.*, a corporation that (1) "was formed for the express purpose of promoting political ideas, and cannot engage in business activities"; (2) "has no shareholders or other persons affiliated so as to have a claim on its assets or earnings"; and (3) "was not established by a business corporation or labor union, and [has a] policy not to accept contributions from such entities." *MCFL*, 479 U.S. at 264. In extending Section 441b's prohibition to payments made for "electioneering communications," Congress evinced no intent to override this Court's decision in *MCFL*, see Kollar-Kotelly op. 459 (discussing legislative history), and the usual presumption is that Congress intends to stay within the constitutional boundaries drawn by this Court. In promulgating regulations to implement BCRA, the FEC has made clear that "[a] qualified nonprofit corporation may make electioneering communications * * * without violating the prohibitions against corporate expenditures." 67 Fed. Reg. 65,211 (2002) (to be codified at 11 C.F.R. 114.10(d)(2)). We therefore do not challenge the district court's holding (see Per Curiam op. 9, 14; Kollar-Kotelly op. 461) that BCRA's prohibition on the use of corporate treasury funds to finance electioneering communications cannot properly be applied to *MCFL* corporations.

ground. See Kollar-Kotelly op. 357 ("For close to one hundred years the political branches have made the choice, consistent with the Constitution, that individual voters have a right to select their federal officials in elections that are free from the direct influence of aggregated corporate treasury wealth and—for over fifty years—from the direct influence of aggregated labor union treasury wealth."). Rather, BCRA's innovation is in the articulation of new criteria for identifying those corporate and union expenditures that are in fact intended to affect federal electoral results. Congress had ample basis for concluding that, under the pre-BCRA regime, "corporations and unions routinely [sought] to influence the outcome of federal elections with general treasury funds by running broadcast advertisements that skirt the prohibition contained in [2 U.S.C.] 441b by simply avoiding *Buckley*'s 'magic words' of express advocacy." *Id.* at 358; see Per Curiam op. 135 ("record * * * clearly demonstrates" that so-called "issue advertisements" financed by corporate and union general treasury funds "threaten the purity of elections"). Drawing upon its Members' extensive campaign experience, Congress "responded to this problem by tightly focusing on the main abuse: broadcast advertisements aired in close proximity to a federal election that clearly identify a federal candidate and are targeted to that candidate's electorate." Kollar-Kotelly op. 358.

BCRA's primary definition of "electioneering communication" is clear and objective. Congress's choice of that definition reflects its informed judgment that advertisements having the specified characteristics are typically intended to influence electoral outcomes and are likely to have that effect. That legislative judgment, which was based in large measure on Members'

direct observations of the use of such communications to circumvent pre-BCRA restrictions on corporate and union campaign spending, is entitled to considerable judicial respect. To the extent that the primary definition could extend to occasional union or corporate communications that are not intended to affect federal elections, the burden that would be imposed by BCRA §§ 201 and 203 is limited. The union or corporation that wishes to distribute such advertisements may finance them from a separate segregated fund; it may disseminate them outside the narrow window of time immediately preceding the relevant federal election or through alternative media; or it may modify the content of such advertisements by deleting express references to a particular federal candidate.[9]

b. The district court largely sustained the disclosure requirements concerning electioneering communications imposed by BCRA § 201. See Per Curiam op. 113-115. The court held, however, that BCRA § 201 is invalid insofar as it requires disclosure of executed contracts for future electioneering communications that

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[9] Although it invalidated BCRA's primary definition of "electioneering communication," the district court held that the backup definition is constitutional, while severing the final clause of that definition on vagueness grounds. See pp. 18-19, *supra*. That final clause requires the message to be "suggestive of no plausible meaning other than an exhortation to vote." BCRA § 201(a) (adding FECA § 304(f)(3)(A)(ii)). Contrary to Judge Leon's determination, that clause is not "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *United States* v. *Lanier*, 520 U.S. 259, 266 (1997). In any event, the final clause of the backup definition is plainly intended to *protect* corporate and union speakers, and to *narrow* the reach of BCRA's restrictions on corporate and union expenditures, by reducing BCRA § 203's potential applicability to communications that are not in fact intended to affect federal elections.

have not yet been publicly distributed. *Id.* at 115-123; see FECA § 304(f)(5) (added by BCRA § 201(a)) ("For purposes of this subsection, a person shall be treated as having made the disbursement if the person has executed a contract to make the disbursement."). That holding is erroneous. Even assuming that new FECA § 304(f)(5) might sometimes have the effect of requiring that contracts be disclosed before the public distribution of an electioneering communication, that requirement would neither prevent any person from speaking nor require disclosure of the specific content of any advertisement. Indeed, under the pre-BCRA regime the definition of "expenditure" included a "written contract, promise, or agreement to make an expenditure," 2 U.S.C. 431(9)(A)(ii) (2000); see 11 C.F.R. 104.11(b), so a requirement that contracts be disclosed at the time of execution would not represent a significant departure from prior law.

3. The district court erred in invalidating BCRA § 213. See Per Curiam op. 10, 14; Henderson op. 256-257; Kollar-Kotelly op. 477; Leon op. 99-106. Once a political party has nominated a candidate for a particular federal election, Section 213 permits the party either (1) to forgo independent expenditures in support of that candidate (in which case it may invoke the increased coordinated-expenditure limits applicable to political parties under 2 U.S.C. 441a(d) (2000)); or (2) to make unlimited independent expenditures in support of that candidate, while abiding by the $5000 limit on contributions and coordinated expenditures applicable to political committees generally. Consistent with the Constitution, Congress might have limited party committees to the second alternative, thereby treating them exactly the same as every other multicandiate political committee. Congress's decision to provide party

committees an additional spending option cannot render the BCRA regime unconstitutional.

4. The district court erred in invalidating BCRA § 318, which prohibits persons less than 18 years old from making contributions to federal candidates or to political parties. See Per Curiam op. 11, 15; Henderson op. 326-333; Kollar-Kotelly op. 610-613; Leon op. 106-111. Section 318 is a valid means of preventing adults from circumventing FECA's contribution limits by making surrogate contributions through minors under their control, and it is consistent with longstanding restrictions on minors' ability to control and dispose of property. In addition, any First Amendment interests that minors may have in participating in the *financing* of federal elections is substantially limited by the fact that minors have no constitutional right to *vote* in such elections. See U.S. Const. Amend. XXVI.

5. The district court erred in striking down BCRA § 504, which requires broadcast stations to maintain and make publicly available specified categories of requests to purchase broadcast time. See Per Curiam op. 11-12, 15; Henderson op. 234-238; Kollar-Kotelly op. 614; Leon op. 111-115. Section 504 applies only to television and radio broadcast stations and cable television systems, and this Court has upheld more intrusive regulation of those media than of any other form of communication. See, *e.g.*, *Turner Broad. Sys., Inc.* v. *FCC*, 512 U.S. 622, 637 (1994); *CBS* v. *FCC*, 453 U.S. 367 (1981). Long-standing Federal Communications Commission regulations have required broadcast stations to disclose candidate "requests" to purchase broadcast time, see 47 C.F.R. 73.1943 (broadcast stations); 47 C.F.R. 76.1701 (cable television systems), and have required disclosure of the sponsors of broadcasts concerning "controversial issue[s] of public importance," see 47 C.F.R. 73.1212(e);

see also 47 C.F.R. 76.1701(d) (cable television). The similar disclosure mandated by BCRA § 504 provides the public with access to information concerning the amounts that individuals and groups are prepared to spend to broadcast messages on political matters of national importance, as well as the sums actually spent on such broadcasts. Requiring disclosure of the identities of those who make requests, and the broadcasters' dispositions of the requests, also enables the public to evaluate whether broadcasters are processing requests in an evenhanded fashion.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted.

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MAY 2003

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 02-582
(CKK, KLH, RJL)

SENATOR MITCH MCCONNELL, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-581
(CKK, KLH, RJL)

NATIONAL RIFLE ASSOCIATION OF AMERICA, ET AL.,
PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-633
(CKK, KLH, RJL)

EMILY ECHOLS, A MINOR CHILD, BY AND THROUGH HER
NEXT FRIENDS, TIM AND WINDY ECHOLS, ET AL.,
PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-751
(CKK, KLH, RJL)

CHAMBER OF COMMERCE OF THE UNITED STATES, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-753
(CKK, KLH, RJL)

NATIONAL ASSOCIATION OF BROADCASTERS, PLAINTIFF

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-754
(CKK, KLH, RJL)

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-781
(CKK, KLH, RJL)

CONGRESSMAN RON PAUL, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-874
(CKK, KLH, RJL)

REPUBLICAN NATIONAL COMMITTEE, ET AL.,
PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-875
(CKK, KLH, RJL)

CALIFORNIA DEMOCRATIC PARTY, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-877
(CKK, KLH, RJL)

VICTORIA JACKSON GRAY ADAMS, ET AL., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

Civil Action No. 02-881
(CKK, KLH, RJL)

REPRESENTATIVE BENNIE G. THOMPSON, ET AL.,
PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

[Filed: May 5, 2003]

NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT

Notice is hereby given that defendants the United States of America, Attorney General John Ashcroft, the United States Department of Justice, and the Federal Communications Commission, hereby appeal to the

United States Supreme Court from the Final Judgment entered in these consolidated actions on the 2nd day of May, 2003. A direct appeal to the United States Supreme Court is authorized by section 403(a)(3) of the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81, 114.

Respectfully submitted,

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Assistant Attorney General
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/s/ RUPA BHATTACHARYYA
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Counsel for Defendants United States of America, John Ashcroft, Attorney General of the United States, the U.S. Department of Justice, and the Federal Communications Commission

Dated: May 3, 2003

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. Civil Action No. 02-0582
(CKK) (KLH) (RJL)
Consolidated Actions

SENATOR MITCH MCCONNELL, ET AL., PLAINTIFF

v.

FEDERAL ELECTION COMMISSION, ET AL., DEFENDANTS

[Filed: May 2, 2003]

NOTICE OF APPEAL

Notice is hereby given that the Federal Election Commission, defendant in the above named cases, appeals to the Supreme Court of the United States from the final judgment entered in these actions on May 2, 2003.

Respectfully submitted

/s/ Lawrence H. Norton
General Counsel

Richard B. Bader
Associate General Counsel

Stephen E. Hershkowitz
Assistant General Counsel

David Kolker
Assistant General Counsel

May 2, 2003

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APPENDIX C

OPINIONS OF THE DISTRICT COURT

Due to the length of the opinions below, appellants are not including the district court's opinions in the appendix to their jurisdictional statement. The opinions can be found on the Internet at http://lsmns2o.gtwy.uscourts.gov/dcd/mcconnell-2002-ruling.html. Appellants have filed a motion to dispense with filing the district court opinions in the appendix to the jurisdictional statement.

APPENDIX D

Article I, Section 4, Clause 1 of the United States Constitution provides as follows:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The First Amendment to the United States Constitution provides as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fifth Amendment to the United States Constitution provides as follows:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

The Tenth Amendment to the United States Constitution provides as follows:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

APPENDIX E

TITLE I—REDUCTION OF SPECIAL INTEREST INFLUENCE

SEC. 101. SOFT MONEY OF POLITICAL PARTIES.

(a) IN GENERAL.—Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by adding at the end the following:

"SEC.323. SOFT MONEY OF POLITICAL PARTIES.

"(a) NATIONAL COMMITTEES.—

"(1) IN GENERAL.—A national committee of a political party (including a national congressional campaign committee of a political party) may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act.

"(2) APPLICABILITY.—The prohibition established by paragraph (1) applies to any such national committee, any officer or agent acting on behalf of such a national committee, and any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee.

"(b) STATE, DISTRICT, AND LOCAL COMMITTEES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), an amount that is expended or disbursed for Federal election activity by a State, district, or local committee of a political party (including an entity that is directly or indirectly established, fi-

nanced, maintained, or controlled by a State, district, or local committee of a political party and an officer or agent acting on behalf of such committee or entity), or by an association or similar group of candidates for State or local office or of individuals holding State or local office, shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

"(2) APPLICABILITY.—

"(A) IN GENERAL.—Notwithstanding clause (i) or (ii) of section 301(20)(A), and subject to subparagraph (B), paragraph (1) shall not apply to any amount expended or disbursed by a State, district, or local committee of a political party for an activity described in either such clause to the extent the amounts expended or disbursed for such activity are allocated (under regulations prescribed by the Commission) among amounts—

"(i) which consist solely of contributions subject to the limitations, prohibitions, and reporting requirements of this Act (other than amounts described in subparagraph (B)(iii)); and

"(ii) other amounts which are not subject to the limitations, prohibitions, and reporting requirements of this Act (other than any requirements of this subsection).

"(B) CONDITIONS.—Subparagraph (A) shall only apply if—

"(i) the activity does not refer to a clearly identified candidate for Federal office;

"(ii) the amounts expended or disbursed are not for the costs of any broadcasting, cable, or satellite communication, other than a communication which refers solely to a clearly identified candidate for State or local office;

"(iii) the amounts expended or disbursed which are described in subparagraph (A)(ii) are paid from amounts which are donated in accordance with State law and which meet the requirements of subparagraph (C), except that no person (including any person established, financed, maintained, or controlled by such person) may donate more than $10,000 to a State, district, or local committee of a political party in a calendar year for such expenditures or disbursements; and

"(iv) the amounts expended or disbursed are made solely from funds raised by the State, local, or district committee which makes such expenditure or disbursement, and do not include any funds provided to such committee from—

"(I) any other State, local, or district committee of any State party,

"(II) the national committee of a political party (including a national congressional campaign committee of a political party),

"(III) any officer or agent acting on behalf of any committee described in subclause (I) or (II), or

"(IV) any entity directly or indirectly established, financed, maintained, or con-

trolled by any committee described in subclause (I) or (II).

"(C) PROHIBITING INVOLVEMENT OF NATIONAL PARTIES, FEDERAL CANDIDATES AND OFFICEHOLDERS, AND STATE PARTIES ACTING JOINTLY.—Notwithstanding subsection (e) (other than subsection (e)(3)), amounts specifically authorized to be spent under subparagraph (B)(iii) meet the requirements of this subparagraph only if the amounts—

"(i) are not solicited, received, directed, transferred, or spent by or in the name of any person described in subsection (a) or (e); and

"(ii) are not solicited, received, or directed through fundraising activities conducted jointly by 2 or more State, local, or district committees of any political party or their agents, or by a State, local, or district committee of a political party on behalf of the State, local, or district committee of a political party or its agent in one or more other States.

"(c) FUNDRAISING COSTS.—An amount spent by a person described in subsection (a) or (b) to raise funds that are used, in whole or in part, for expenditures and disbursements for a Federal election activity shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

"(d) TAX-EXEMPT ORGANIZATIONS.—A national, State, district, or local committee of a political party (including a national congressional campaign committee of a political party), an entity that is directly or indirectly established, financed, maintained, or controlled by any such national, State, district, or local committee

or its agent, and an officer or agent acting on behalf of any such party committee or entity, shall not solicit any funds for, or make or direct any donations to—

"(1) an organization that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code (or has submitted an application for determination of tax exempt status under such section) and that makes expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity); or

"(2) an organization described in section 527 of such Code (other than a political committee, a State, district, or local committee of a political party, or the authorized campaign committee of a candidate for State or local office).

"(e) FEDERAL CANDIDATES.—

"(1) IN GENERAL.—A candidate, individual holding Federal office, agent of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office, shall not—

"(A) solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act; or

"(B) solicit, receive, direct, transfer, or spend funds in connection with any election other than an election for Federal office or disburse funds in

connection with such an election unless the funds—

"(i) are not in excess of the amounts permitted with respect to contributions to candidates and political committees under paragraphs (1), (2), and (3) of section 315(a); and

"(ii) are not from sources prohibited by this Act from making contributions in connection with an election for Federal office.

"(2) STATE LAW.—Paragraph (1) does not apply to the solicitation, receipt, or spending of funds by an individual described in such paragraph who is or was also a candidate for a State or local office solely in connection with such election for State or local office if the solicitation, receipt, or spending of funds is permitted under State law and refers only to such State or local candidate, or to any other candidate for the State or local office sought by such candidate, or both.

"(3) FUNDRAISING EVENTS.—Notwithstanding paragraph (1) or subsection (b)(2)(C), a candidate or an individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party.

"(4) PERMITTING CERTAIN SOLICITATIONS.—

"(A) GENERAL SOLICITATIONS.—Notwithstanding any other provision of this subsection, an individual described in paragraph (1) may make a general solicitation of funds on behalf of any organization that is described in section 501(c) of the Internal Revenue Code of 1986 and

exempt from taxation under section 501(a) of such Code (or has submitted an application for determination of tax exempt status under such section) (other than an entity whose principal purpose is to conduct activities described in clauses (i) and (ii) of section 301(20)(A)) where such solicitation does not specify how the funds will or should be spent.

"(B) CERTAIN SPECIFIC SOLICITATIONS.—In addition to the general solicitations permitted under subparagraph (A), an individual described in paragraph (1) may make a solicitation explicitly to obtain funds for carrying out the activities described in clauses (i) and (ii) of section 301(20)(A), or for an entity whose principal purpose is to conduct such activities, if—

"(i) the solicitation is made only to individuals; and

"(ii) the amount solicited from any individual during any calendar year does not exceed $20,000.

"(f) STATE CANDIDATES.—

"(1) IN GENERAL.—A candidate for State or local office, individual holding State or local office, or an agent of such a candidate or individual may not spend any funds for a communication described in section 301(20)(A)(iii) unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act.

"(2) EXCEPTION FOR CERTAIN COMMUNICATIONS.—Paragraph (1) shall not apply to an individual described in such paragraph if the communication involved is in connection with an election for such State

or local office and refers only to such individual or to any other candidate for the State or local office held or sought by such individual, or both.".

(b) DEFINITIONS.—Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) is amended by adding at the end thereof the following:

"(20) FEDERAL ELECTION ACTIVITY.—

"(A) IN GENERAL.—The term 'Federal election activity' means—

"(i) voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election;

"(ii) voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot);

"(iii) a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate); or

"(iv) services provided during any month by an employee of a State, district, or local

committee of a political party who spends more than 25 percent of that individual's compensated time during that month on activities in connection with a Federal election.

"(B) EXCLUDED ACTIVITY.—The term 'Federal election activity' does not include an amount expended or disbursed by a State, district, or local committee of a political party for—

"(i) a public communication that refers solely to a clearly identified candidate for State or local office, if the communication is not a Federal election activity described in subparagraph (A)(i) or (ii);

"(ii) a contribution to a candidate for State or local office, provided the contribution is not designated to pay for a Federal election activity described in subparagraph (A);

"(iii) the costs of a State, district, or local political convention; and

"(iv) the costs of grassroots campaign materials, including buttons, bumper stickers, and yard signs, that name or depict only a candidate for State or local office.

"(21) GENERIC CAMPAIGN ACTIVITY.—The term 'generic campaign activity' means a campaign activity that promotes a political party and does not promote a candidate or non-Federal candidate.

"(22) PUBLIC COMMUNICATION.—The term 'public communication' means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass

mailing, or telephone bank to the general public, or any other form of general public political advertising.

"(23) MASS MAILING.—The term 'mass mailing' means a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period.

"(24) TELEPHONE BANK.—The term 'telephone bank' means more than 500 telephone calls of an identical or substantially similar nature within any 30-day period.".

SEC. 102. INCREASED CONTRIBUTION LIMIT FOR STATE COMMITTEES OF POLITICAL PARTIES.

Section 315(a)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(1)) is amended—

(1) in subparagraph (B), by striking "or" at the end;

(2) in subparagraph (C)—

(A) by inserting "(other than a committee described in subparagraph (D))" after "committee"; and

(B) by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(D) to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed $10,000.".

SEC. 103. REPORTING REQUIREMENTS.

(a) REPORTING REQUIREMENTS.—Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) is amended by adding at the end the following:

"(e) POLITICAL COMMITTEES.—

"(1) NATIONAL AND CONGRESSIONAL POLITICAL COMMITTEES.—The national committee of a political party, any national congressional campaign committee of a political party, and any subordinate committee of either, shall report all receipts and disbursements during the reporting period.

"(2) OTHER POLITICAL COMMITTEES TO WHICH SECTION 323 APPLIES.—

"(A) IN GENERAL.—In addition to any other reporting requirements applicable under this Act, a political committee (not described in paragraph (1)) to which section 323(b)(1) applies shall report all receipts and disbursements made for activities described in section 301(20)(A), unless the aggregate amount of such receipts and disbursements during the calendar year is less than $5,000.

"(B) SPECIFIC DISCLOSURE BY STATE AND LOCAL PARTIES OF CERTAIN NON-FEDERAL AMOUNTS PERMITTED TO BE SPENT ON FEDERAL ELECTION ACTIVITY.—Each report by a political committee under subparagraph (A) of receipts and disbursements made for activities described in section 301(20)(A) shall include a disclosure of all receipts and disbursements described in section 323(b)(2)(A) and (B).

"(3) ITEMIZATION.—If a political committee has receipts or disbursements to which this subsection applies from or to any person aggregating in excess of $200 for any calendar year, the political committee shall separately itemize its reporting for such person in the same manner as required in paragraphs (3)(A), (5), and (6) of subsection (b).

"(4) REPORTING PERIODS.—Reports required to be filed under this subsection shall be filed for the same time periods required for political committees under subsection (a)(4)(B).".

(b) BUILDING FUND EXCEPTION TO THE DEFINITION OF CONTRIBUTION.—

(1) IN GENERAL.—Section 301(8)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)(B)) is amended—

(A) by striking clause (viii); and

(B) by redesignating clauses (ix) through (xv) as clauses (viii) through (xiv), respectively.

(2) NONPREEMPTION OF STATE LAW.—Section 403 of such Act (2 U.S.C. 453) is amended—

(A) by striking "The provisions of this Act" and inserting "(a) IN GENERAL.—Subject to subsection (b), the provisions of this Act"; and

(B) by adding at the end the following:

"(b) STATE AND LOCAL COMMITTEES OF POLITICAL PARTIES.—Notwithstanding any other provision of this Act, a State or local committee of a political party may, subject to State law, use exclusively funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act for the purchase or construction of an office building for such State or local committee.".

TITLE II—NONCANDIDATE CAMPAIGN EXPENDITURES

Subtitle A—Electioneering Communications

SEC. 201. DISCLOSURE OF ELECTIONEERING COMMUNICATIONS.

(a) IN GENERAL.—Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434), as amended by section 103, is amended by adding at the end the following new subsection:

"(f) DISCLOSURE OF ELECTIONEERING COMMUNICATIONS.—

"(1) STATEMENT REQUIRED.—Every person who makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of $10,000 during any calendar year shall, within 24 hours of each disclosure date, file with the Commission a statement containing the information described in paragraph (2).

"(2) CONTENTS OF STATEMENT.—Each statement required to be filed under this subsection shall be made under penalty of perjury and shall contain the following information:

"(A) The identification of the person making the disbursement, of any person sharing or exercising direction or control over the activities of such person, and of the custodian of the books and accounts of the person making the disbursement.

"(B) The principal place of business of the person making the disbursement, if not an individual.

"(C) The amount of each disbursement of more than $200 during the period covered by the statement and the identification of the person to whom the disbursement was made.

"(D) The elections to which the electioneering communications pertain and the names (if known) of the candidates identified or to be identified.

"(E) If the disbursements were paid out of a segregated bank account which consists of funds contributed solely by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))) directly to this account for electioneering communications, the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to that account during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. Nothing in this subparagraph is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.

"(F) If the disbursements were paid out of funds not described in subparagraph (E), the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to the person making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.

"(3) ELECTIONEERING COMMUNICATION.—For purposes of this subsection—

"(A) IN GENERAL.—(i) The term 'electioneering communication' means any broadcast, cable, or satellite communication which—

"(I) refers to a clearly identified candidate for Federal office;

"(II) is made within—

"(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or

"(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and

"(III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

"(ii) If clause (i) is held to be constitutionally insufficient by final judicial decision to support the regulation provided herein, then the term 'electioneering communication' means any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate. Nothing in this subparagraph shall be con-

strued to affect the interpretation or application of section 100.22(b) of title 11, Code of Federal Regulations.

"(B) EXCEPTIONS.—The term 'electioneering communication' does not include—

"(i) a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate;

"(ii) a communication which constitutes an expenditure or an independent expenditure under this Act;

"(iii) a communication which constitutes a candidate debate or forum conducted pursuant to regulations adopted by the Commission, or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

"(iv) any other communication exempted under such regulations as the Commission may promulgate (consistent with the requirements of this paragraph) to ensure the appropriate implementation of this paragraph, except that under any such regulation a communication may not be exempted if it meets the requirements of this paragraph and is described in section 301(20)(A)(iii).

"(C) TARGETING TO RELEVANT ELECTORATE.—For purposes of this paragraph, a communication which refers to a clearly identified candidate for Federal office is 'targeted to the relevant electorate'

if the communication can be received by 50,000 or more persons—

"(i) in the district the candidate seeks to represent, in the case of a candidate for Representative in, or Delegate or Resident Commissioner to, the Congress; or

"(ii) in the State the candidate seeks to represent, in the case of a candidate for Senator.

"(4) DISCLOSURE DATE.—For purposes of this subsection, the term 'disclosure date' means—

"(A) the first date during any calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000; and

"(B) any other date during such calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000 since the most recent disclosure date for such calendar year.

"(5) CONTRACTS TO DISBURSE.—For purposes of this subsection, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

"(6) COORDINATION WITH OTHER REQUIREMENTS.—Any requirement to report under this subsection shall be in addition to any other reporting requirement under this Act.

"(7) COORDINATION WITH INTERNAL REVENUE CODE.—Nothing in this subsection may be construed to establish, modify, or otherwise affect the definition of

political activities or electioneering activities (including the definition of participating in, intervening in, or influencing or attempting to influence a political campaign on behalf of or in opposition to any candidate for public office) for purposes of the Internal Revenue Code of 1986.".

(b) RESPONSIBILITIES OF FEDERAL COMMUNICATIONS COMMISSION.—The Federal Communications Commission shall compile and maintain any information the Federal Election Commission may require to carry out section 304(f) of the Federal Election Campaign Act of 1971 (as added by subsection (a)), and shall make such information available to the public on the Federal Communication Commission's website.

SEC. 202. COORDINATED COMMUNICATIONS AS CONTRIBUTIONS.

Section 315(a)(7) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(7)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

"(C) if—

"(i) any person makes, or contracts to make, any disbursement for any electioneering communication (within the meaning of section 304(f)(3)); and

"(ii) such disbursement is coordinated with a candidate or an authorized committee of such candidate, a Federal, State, or local political party or committee thereof, or an agent or official of any such candidate, party, or committee;

such disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party; and".

SEC. 203. PROHIBITION OF CORPORATE AND LABOR DISBURSEMENTS FOR ELECTIONEERING COMMUNICATIONS.

(a) IN GENERAL.—Section 316(b)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b(b)(2)) is amended by inserting "or for any applicable electioneering communication" before ", but shall not include".

(b) APPLICABLE ELECTIONEERING COMMUNICATION.—Section 316 of such Act is amended by adding at the end the following:

"(c) RULES RELATING TO ELECTIONEERING COMMUNICATIONS.—

"(1) APPLICABLE ELECTIONEERING COMMUNICATION.—For purposes of this section, the term 'applicable electioneering communication' means an electioneering communication (within the meaning of section 304(f)(3)) which is made by any entity described in subsection (a) of this section or by any other person using funds donated by an entity described in subsection (a) of this section.

"(2) EXCEPTION.—Notwithstanding paragraph (1), the term 'applicable electioneering communication' does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) made under section 304(f)(2)(E) or (F)

of this Act if the communication is paid for exclusively by funds provided directly by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))). For purposes of the preceding sentence, the term 'provided directly by individuals' does not include funds the source of which is an entity described in subsection (a) of this section.

"(3) SPECIAL OPERATING RULES.—

"(A) DEFINITION UNDER PARAGRAPH (1).—An electioneering communication shall be treated as made by an entity described in subsection (a) if an entity described in subsection (a) directly or indirectly disburses any amount for any of the costs of the communication.

"(B) EXCEPTION UNDER PARAGRAPH (2).—A section 501(c)(4) organization that derives amounts from business activities or receives funds from any entity described in subsection (a) shall be considered to have paid for any communication out of such amounts unless such organization paid for the communication out of a segregated account to which only individuals can contribute, as described in section 304(f)(2)(E).

"(4) DEFINITIONS AND RULES.—For purposes of this subsection—

"(A) the term 'section 501(c)(4) organization' means—

"(i) an organization described in section 501(c)(4) of the Internal Revenue Code of

1986 and exempt from taxation under section 501(a) of such Code; or

"(ii) an organization which has submitted an application to the Internal Revenue Service for determination of its status as an organization described in clause (i); and

"(B) a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

"(5) COORDINATION WITH INTERNAL REVENUE CODE.—Nothing in this subsection shall be construed to authorize an organization exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 to carry out any activity which is prohibited under such Code.".

SEC. 204. RULES RELATING TO CERTAIN TARGETED ELECTIONEERING COMMUNICATIONS.

Section 316(c) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b), as added by section 203, is amended by adding at the end the following:

"(6) SPECIAL RULES FOR TARGETED COMMUNICATIONS.—

"(A) EXCEPTION DOES NOT APPLY.—Paragraph (2) shall not apply in the case of a targeted communication that is made by an organization described in such paragraph.

"(B) TARGETED COMMUNICATION.—For purposes of subparagraph (A), the term 'targeted communication' means an electioneering communication (as defined in section 304(f)(3))

that is distributed from a television or radio broadcast station or provider of cable or satellite television service and, in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

"(C) DEFINITION.—For purposes of this paragraph, a communication is 'targeted to the relevant electorate' if it meets the requirements described in section 304(f)(3)(C).".

Subtitle B—Independent and Coordinated Expenditures

SEC. 211. DEFINITION OF INDEPENDENT EXPENDITURE.

Section 301 of the Federal Election Campaign Act (2 U.S.C. 431) is amended by striking paragraph (17) and inserting the following:

"(17) INDEPENDENT EXPENDITURE.—The term 'independent expenditure' means an expenditure by a person—

"(A) expressly advocating the election or defeat of a clearly identified candidate; and

"(B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.".

SEC. 212. REPORTING REQUIREMENTS FOR CERTAIN INDEPENDENT EXPENDITURES.

(a) IN GENERAL.—Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) (as amended by section 201) is amended—

(1) in subsection (c)(2), by striking the undesignated matter after subparagraph (C); and

(2) by adding at the end the following:

"(g) TIME FOR REPORTING CERTAIN EXPENDITURES.—

"(1) EXPENDITURES AGGREGATING $1,000.—

(A) INITIAL REPORT.—A person (including a political committee) that makes or contracts to make independent expenditures aggregating $1,000 or more after the 20th day, but more than 24 hours, before the date of an election shall file a report describing the expenditures within 24 hours.

"(B) ADDITIONAL REPORTS.—After a person files a report under subparagraph (A), the person shall file an additional report within 24 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $1,000 with respect to the same election as that to which the initial report relates.

"(2) EXPENDITURES AGGREGATING $10,000.—

"(A) INITIAL REPORT.—A person (including a political committee) that makes or contracts to make independent expenditures aggregating $10,000 or more at any time up to and including the 20th day before the date of an election shall file a report describing the expenditures within 48 hours.

"(B) ADDITIONAL REPORTS.—After a person files a report under subparagraph (A), the person shall file an additional report within 48 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $10,000 with respect to the same election as that to which the initial report relates.

"(3) PLACE OF FILING; CONTENTS.—A report under this subsection—

"(A) shall be filed with the Commission; and

"(B) shall contain the information required by subsection (b)(6)(B)(iii), including the name of each candidate whom an expenditure is intended to support or oppose.".

(b) TIME OF FILING OF CERTAIN STATEMENTS.—

(1) IN GENERAL.—Section 304(g) of such Act, as added by subsection (a), is amended by adding at the end the following:

"(4) TIME OF FILING FOR EXPENDITURES AGGREGATING $1,000.—Notwithstanding subsection (a)(5), the time at which the statement under paragraph (1) is received by the Commission or any other recipient to whom the notification is required to be sent shall be considered the time of filing of the statement with the recipient.".

(2) CONFORMING AMENDMENTS.—(A) Section 304(a)(5) of such Act (2 U.S.C. 434(a)(5)) is amended by striking "the second sentence of subsection (c)(2)" and inserting "subsection (g)(1)".

(B) Section 304(d)(1) of such Act (2 U.S.C. 434(d)(1)) is amended by inserting "or (g)" after "subsection (c)".

SEC. 213. INDEPENDENT VERSUS COORDINATED EXPENDITURES BY PARTY.

Section 315(d) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(d)) is amended—

(1) in paragraph (1), by striking "and (3)" and inserting ", (3), and (4)";

(2) by adding at the end the following:

"(4) INDEPENDENT VERSUS COORDINATED EXPENDITURES BY PARTY.—

"(A) IN GENERAL.—On or after the date on which a political party nominates a candidate, no committee of the political party may make—

"(i) any coordinated expenditure under this subsection with respect to the candidate during the election cycle at any time after it makes any independent expenditure (as defined in section 301(17)) with respect to the candidate during the election cycle; or

"(ii) any independent expenditure (as defined in section 301(17)) with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under this subsection with respect to the candidate during the election cycle.

"(B) APPLICATION.—For purposes of this paragraph, all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee.

"(C) TRANSFERS.—A committee of a political party that makes coordinated expenditures under this subsection with respect to a candidate shall not, during an election cycle, transfer any funds to, assign authority to make coordinated expenditures under this subsection to, or receive a transfer of funds from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate.".

SEC. 214. COORDINATION WITH CANDIDATES OR POLITICAL PARTIES.

(a) IN GENERAL.—Section 315(a)(7)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(7)(B)) is amended—

(1) by redesignating clause (ii) as clause (iii); and

(2) by inserting after clause (i) the following new clause:

"(ii) expenditures made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert with, or at the request or suggestion of, a national, State, or local committee of a political party, shall be considered to be contributions made to such party committee; and".

(b) REPEAL OF CURRENT REGULATIONS.—The regulations on coordinated communications paid for by persons other than candidates, authorized committees of candidates, and party committees adopted by the Federal Election Commission and published in the Federal Register at page 76138 of volume 65, Federal

Register, on December 6, 2000, are repealed as of the date by which the Commission is required to promulgate new regulations under subsection (c) (as described in section 402(c)(1)).

(c) REGULATIONS BY THE FEDERAL ELECTION COMMISSION.—The Federal Election Commission shall promulgate new regulations on coordinated communications paid for by persons other than candidates, authorized committees of candidates, and party committees. The regulations shall not require agreement or formal collaboration to establish coordination. In addition to any subject determined by the Commission, the regulations shall address—

(1) payments for the republication of campaign materials;

(2) payments for the use of a common vendor;

(3) payments for communications directed or made by persons who previously served as an employee of a candidate or a political party; and

(4) payments for communications made by a person after substantial discussion about the communication with a candidate or a political party.

(d) MEANING OF CONTRIBUTION OR EXPENDITURE FOR THE PURPOSES OF SECTION 316.—Section 316(b)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b(b)(2)) is amended by striking "shall include" and inserting "includes a contribution or expenditure, as those terms are defined in section 301, and also includes".

TITLE III—MISCELLANEOUS

SEC. 301. USE OF CONTRIBUTED AMOUNTS FOR CERTAIN PURPOSES.

Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by striking section 313 and inserting the following:

"(a) PERMITTED USES.—A contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of Federal office, may be used by the candidate or individual—

"(1) for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual;

"(2) for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office;

"(3) for contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986; or

"(4) for transfers, without limitation, to a national, State, or local committee of a political party.

"(b) PROHIBITED USE.—

"(1) IN GENERAL.—A contribution or donation described in subsection (a) shall not be converted by any person to personal use.

"(2) CONVERSION.—For the purposes of paragraph (1), a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or

individual's duties as a holder of Federal office, including—

"(A) a home mortgage, rent, or utility payment;

"(B) a clothing purchase;

"(C) a noncampaign-related automobile expense;

"(D) a country club membership;

"(E) a vacation or other noncampaign-related trip;

"(F) a household food item;

"(G) a tuition payment;

"(H) admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign; and

"(I) dues, fees, and other payments to a health club or recreational facility.".

SEC. 302. PROHIBITION OF FUNDRAISING ON FEDERAL PROPERTY.

Section 607 of title 18, United States Code, is amended—

(1) by striking subsection (a) and inserting the following:

"(a) PROHIBITION.—

"(1) IN GENERAL.—It shall be unlawful for any person to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election from a person who is located in a room or building occupied in the discharge of

official duties by an officer or employee of the United States. It shall be unlawful for an individual who is an officer or employee of the Federal Government, including the President, Vice President, and Members of Congress, to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election, while in any room or building occupied in the discharge of official duties by an officer or employee of the United States, from any person.

"(2) PENALTY.—A person who violates this section shall be fined not more than $5,000, imprisoned not more than 3 years, or both."; and

(2) in subsection (b), by inserting "or Executive Office of the President" after "Congress".

SEC. 303. STRENGTHENING FOREIGN MONEY BAN.

Section 319 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441e) is amended—

(1) by striking the heading and inserting the following: "CONTRIBUTIONS AND DONATIONS BY FOREIGN NATIONALS"; and

(2) by striking subsection (a) and inserting the following:

"(a) PROHIBITION.—It shall be unlawful for—

"(1) a foreign national, directly or indirectly, to make—

"(A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or

donation, in connection with a Federal, State, or local election;

"(B) a contribution or donation to a committee of a political party; or

"(C) an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 304(f)(3)); or

"(2) a person to solicit, accept, or receive a contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national.".

SEC. 304. MODIFICATION OF INDIVIDUAL CONTRIBUTION LIMITS IN RESPONSE TO EXPENDITURES FROM PERSONAL FUNDS.

(a) INCREASED LIMITS FOR INDIVIDUALS.—Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) is amended—

(1) in subsection (a)(1), by striking "No person" and inserting "Except as provided in subsection (i), no person"; and

(2) by adding at the end the following:

"(i) INCREASED LIMIT TO ALLOW RESPONSE TO EXPENDITURES FROM PERSONAL FUNDS.—

"(1) INCREASE.—

"(A) IN GENERAL.—Subject to paragraph (2), if the opposition personal funds amount with respect to a candidate for election to the office of Senator exceeds the threshold amount, the limit under subsection (a)(1)(A) (in this subsection

referred to as the 'applicable limit') with respect to that candidate shall be the increased limit.

"(B) THRESHOLD AMOUNT.—

"(i) STATE-BY-STATE COMPETITIVE AND FAIR CAMPAIGN FORMULA.—In this subsection, the threshold amount with respect to an election cycle of a candidate described in subparagraph (A) is an amount equal to the sum of—

"(I) $150,000; and

"(II) $0.04 multiplied by the voting age population.

"(ii) VOTING AGE POPULATION.—In this subparagraph, the term 'voting age population' means in the case of a candidate for the office of Senator, the voting age population of the State of the candidate (as certified under section 315(e)).

"(C) INCREASED LIMIT.—Except as provided in clause (ii), for purposes of subparagraph (A), if the opposition personal funds amount is over—

"(i) 2 times the threshold amount, but not over 4 times that amount—

"(I) the increased limit shall be 3 times the applicable limit; and

"(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during

a period in which the candidate may accept such a contribution;

"(ii) 4 times the threshold amount, but not over 10 times that amount—

"(I) the increased limit shall be 6 times the applicable limit; and

"(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution; and

"(iii) 10 times the threshold amount—

"(I) the increased limit shall be 6 times the applicable limit;

"(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution; and

"(III) the limits under subsection (d) with respect to any expenditure by a State or national committee of a political party shall not apply.

"(D) OPPOSITION PERSONAL FUNDS AMOUNT.—The opposition personal funds amount is an amount equal to the excess (if any) of—

"(i) the greatest aggregate amount of expenditures from personal funds (as defined in section 304(a)(6)(B)) that an opposing candidate in the same election makes; over

"(ii) the aggregate amount of expenditures from personal funds made by the candidate with respect to the election.

"(2) TIME TO ACCEPT CONTRIBUTIONS UNDER INCREASED LIMIT.—

"(A) IN GENERAL.—Subject to subparagraph (B), a candidate and the candidate's authorized committee shall not accept any contribution, and a party committee shall not make any expenditure, under the increased limit under paragraph (1)—

"(i) until the candidate has received notification of the opposition personal funds amount under section 304(a)(6)(B); and

"(ii) to the extent that such contribution, when added to the aggregate amount of contributions previously accepted and party expenditures previously made under the increased limits under this subsection for the election cycle, exceeds 110 percent of the opposition personal funds amount.

"(B) EFFECT OF WITHDRAWAL OF AN OPPOSING CANDIDATE.—A candidate and a candidate's authorized committee shall not accept any contribution and a party shall not make any expenditure under the increased limit after the date on which an opposing candidate ceases to be a candidate to the extent that the amount of such

increased limit is attributable to such an opposing candidate.

"(3) DISPOSAL OF EXCESS CONTRIBUTIONS.—

"(A) IN GENERAL.—The aggregate amount of contributions accepted by a candidate or a candidate's authorized committee under the increased limit under paragraph (1) and not otherwise expended in connection with the election with respect to which such contributions relate shall, not later than 50 days after the date of such election, be used in the manner described in subparagraph (B).

"(B) RETURN TO CONTRIBUTORS.—A candidate or a candidate's authorized committee shall return the excess contribution to the person who made the contribution.

"(j) LIMITATION ON REPAYMENT OF PERSONAL LOANS.—Any candidate who incurs personal loans made after the effective date of the Bipartisan Campaign Reform Act of 2002 in connection with the candidate's campaign for election shall not repay (directly or indirectly), to the extent such loans exceed $250,000, such loans from any contributions made to such candidate or any authorized committee of such candidate after the date of such election.".

(b) NOTIFICATION OF EXPENDITURES FROM PERSONAL FUNDS.—Section 304(a)(6) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)(6)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (E); and

(2) by inserting after subparagraph (A) the following:

"(B) NOTIFICATION OF EXPENDITURE FROM PERSONAL FUNDS.—

"(i) DEFINITION OF EXPENDITURE FROM PERSONAL FUNDS.—In this subparagraph, the term 'expenditure from personal funds' means—

"(I) an expenditure made by a candidate using personal funds; and

"(II) a contribution or loan made by a candidate using personal funds or a loan secured using such funds to the candidate's authorized committee.

"(ii) DECLARATION OF INTENT.—Not later than the date that is 15 days after the date on which an individual becomes a candidate for the office of Senator, the candidate shall file a declaration stating the total amount of expenditures from personal funds that the candidate intends to make, or to obligate to make, with respect to the election that will exceed the State-by-State competitive and fair campaign formula with—

"(I) the Commission; and

"(II) each candidate in the same election.

"(iii) INITIAL NOTIFICATION.—Not later than 24 hours after a candidate described in clause (ii) makes or obligates to make an aggregate amount of expenditures from personal funds in excess of 2 times the threshold amount in connection with any election, the candidate shall file a notification with—

"(I) the Commission; and

"(II) each candidate in the same election.

"(iv) ADDITIONAL NOTIFICATION.—After a candidate files an initial notification under clause (iii), the candidate shall file an additional notification each time expenditures from personal funds are made or obligated to be made in an aggregate amount that exceed $10,000 with—

"(I) the Commission; and

"(II) each candidate in the same election.

Such notification shall be filed not later than 24 hours after the expenditure is made.

"(v) CONTENTS.—A notification under clause (iii) or (iv) shall include—

"(I) the name of the candidate and the office sought by the candidate;

"(II) the date and amount of each expenditure; and

"(III) the total amount of expenditures from personal funds that the candidate has made, or obligated to make, with respect to an election as of the date of the expenditure that is the subject of the notification.

"(C) NOTIFICATION OF DISPOSAL OF EXCESS CONTRIBUTIONS.—In the next regularly scheduled report after the date of the election for which a candidate seeks nomination for election to, or election to, Federal office, the candidate or the candidate's authorized committee shall submit to the Commission a report indicating the source and amount of any excess contributions (as determined under paragraph (1) of section 315(i))

and the manner in which the candidate or the candidate's authorized committee used such funds.

"(D) ENFORCEMENT.—For provisions providing for the enforcement of the reporting requirements under this paragraph, see section 309.".

(c) DEFINITIONS.—Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431), as amended by section 101(b), is further amended by adding at the end the following:

"(25) ELECTION CYCLE.—For purposes of sections 315(i) and 315A and paragraph (26), the term 'election cycle' means the period beginning on the day after the date of the most recent election for the specific office or seat that a candidate is seeking and ending on the date of the next election for that office or seat. For purposes of the preceding sentence, a primary election and a general election shall be considered to be separate elections.

"(26) PERSONAL FUNDS.—The term 'personal funds' means an amount that is derived from—

"(A) any asset that, under applicable State law, at the time the individual became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had—

"(i) legal and rightful title; or

"(ii) an equitable interest;

"(B) income received during the current election cycle of the candidate, including—

"(i) a salary and other earned income from bona fide employment;

"(ii) dividends and proceeds from the sale of the candidate's stocks or other investments;

"(iii) bequests to the candidate;

"(iv) income from trusts established before the beginning of the election cycle;

"(v) income from trusts established by bequest after the beginning of the election cycle of which the candidate is the beneficiary;

"(vi) gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle; and

"(vii) proceeds from lotteries and similar legal games of chance; and

"(C) a portion of assets that are jointly owned by the candidate and the candidate's spouse equal to the candidate's share of the asset under the instrument of conveyance or ownership, but if no specific share is indicated by an instrument of conveyance or ownership, the value of 1/2 of the property.".

SEC. 305. LIMITATION ON AVAILABILITY OF LOWEST UNIT CHARGE FOR FEDERAL CANDIDATES ATTACKING OPPOSITION.

(a) IN GENERAL.—Section 315(b) of the Communications Act of 1934 (47 U.S. C. 315(b)) is amended—

(1) by striking "(b) The charges" and inserting the following:

"(b) CHARGES.—

"(1) IN GENERAL.—The charges";

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(3) by adding at the end the following:

"(2) CONTENT OF BROADCASTS.—

"(A) IN GENERAL.—In the case of a candidate for Federal office, such candidate shall not be entitled to receive the rate under paragraph (1)(A) for the use of any broadcasting station unless the candidate provides written certification to the broadcast station that the candidate (and any authorized committee of the candidate) shall not make any direct reference to another candidate for the same office, in any broadcast using the rights and conditions of access under this Act, unless such reference meets the requirements of subparagraph (C) or (D).

"(B) LIMITATION ON CHARGES.—If a candidate for Federal office (or any authorized committee of such candidate) makes a reference described in subparagraph (A) in any broadcast

that does not meet the requirements of subparagraph (C) or (D), such candidate shall not be entitled to receive the rate under paragraph (1)(A) for such broadcast or any other broadcast during any portion of the 45-day and 60-day periods described in paragraph (1)(A), that occur on or after the date of such broadcast, for election to such office.

"(C) TELEVISION BROADCASTS.—A candidate meets the requirements of this subparagraph if, in the case of a television broadcast, at the end of such broadcast there appears simultaneously, for a period no less than 4 seconds—

"(i) a clearly identifiable photographic or similar image of the candidate; and

"(ii) a clearly readable printed statement, identifying the candidate and stating that the candidate has approved the broadcast and that the candidate's authorized committee paid for the broadcast.

"(D) RADIO BROADCASTS.—A candidate meets the requirements of this subparagraph if, in the case of a radio broadcast, the broadcast includes a personal audio statement by the candidate that identifies the candidate, the office the candidate is seeking, and indicates that the candidate has approved the broadcast.

"(E) CERTIFICATION.—Certifications under this section shall be provided and certified as accurate by the candidate (or any authorized committee of the candidate) at the time of purchase.

"(F) DEFINITIONS.—For purposes of this paragraph, the terms 'authorized committee' and 'Federal office' have the meanings given such terms by section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431).".

(b) CONFORMING AMENDMENT.—Section 315(b)(1)(A) of the Communications Act of 1934 (47 U.S.C. 315(b)(1)(A)), as amended by this Act, is amended by inserting "subject to paragraph (2)," before "during the forty-five days".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to broadcasts made after the effective date of this Act.

SEC. 306. SOFTWARE FOR FILING REPORTS AND PROMPT DISCLOSURE OF CONTRIBUTIONS.

Section 304(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)) is amended by adding at the end the following:

"(12) SOFTWARE FOR FILING OF REPORTS.—

"(A) IN GENERAL.—The Commission shall —

"(i) promulgate standards to be used by vendors to develop software that—

"(I) permits candidates to easily record information concerning receipts and disbursements required to be reported under this Act at the time of the receipt or disbursement;

"(II) allows the information recorded under subclause (I) to be transmitted immediately to the Commission; and

"(III) allows the Commission to post the information on the Internet immediately upon receipt; and

"(ii) make a copy of software that meets the standards promulgated under clause (i) available to each person required to file a designation, statement, or report in electronic form under this Act.

"(B) ADDITIONAL INFORMATION.—To the extent feasible, the Commission shall require vendors to include in the software developed under the standards under subparagraph (A) the ability for any person to file any designation, statement, or report required under this Act in electronic form.

"(C) REQUIRED USE.—Notwithstanding any provision of this Act relating to times for filing reports, each candidate for Federal office (or that candidate's authorized committee) shall use software that meets the standards promulgated under this paragraph once such software is made available to such candidate.

"(D) REQUIRED POSTING.—The Commission shall, as soon as practicable, post on the Internet any information received under this paragraph.".

SEC. 307. MODIFICATION OF CONTRIBUTION LIMITS.

(a) INCREASE IN INDIVIDUAL LIMITS FOR CERTAIN CONTRIBUTIONS.—Section 315(a)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(1)) is amended—

(1) in subparagraph (A), by striking "$1,000" and inserting "$2,000"; and

(2) in subparagraph (B), by striking "$20,000" and inserting "$25,000".

(b) INCREASE IN ANNUAL AGGREGATE LIMIT ON INDIVIDUAL CONTRIBUTIONS.—Section 315(a)(3) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(3)) is amended to read as follows:

"(3) During the period which begins on January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year, no individual may make contributions aggregating more than—

"(A) $37,500, in the case of contributions to candidates and the authorized committees of candidates;

"(B) $57,500, in the case of any other contributions, of which not more than $37,500 may be attributable to contributions to political committees which are not political committees of national political parties.".

(c) INCREASE IN SENATORIAL CAMPAIGN COMMITTEE LIMIT.—Section 315(h) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(h)) is amended by striking "$17,500" and inserting "$35,000".

(d) INDEXING OF CONTRIBUTION LIMITS.—Section 315(c) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(c)) is amended—

(1) in paragraph (1)—

(A) by striking the second and third sentences;

(B) by inserting "(A)" before "At the beginning"; and

(C) by adding at the end the following:

"(B) Except as provided in subparagraph (C), in any calendar year after 2002—

"(i) a limitation established by subsections (a)(1)(A), (a)(1)(B), (a)(3), (b), (d), or (h) shall be increased by the percent difference determined under subparagraph (A);

"(ii) each amount so increased shall remain in effect for the calendar year; and

"(iii) if any amount after adjustment under clause (i) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

"(C) In the case of limitations under subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h), increases shall only be made in odd-numbered years and such increases shall remain in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election."; and

(2) in paragraph (2)(B), by striking "means the calendar year 1974" and inserting "means—

"(i) for purposes of subsections (b) and (d), calendar year 1974; and

"(ii) for purposes of subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h), calendar year 2001".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to contributions made on or after January 1, 2003.

SEC. 308. DONATIONS TO PRESIDENTIAL INAUGURAL COMMITTEE.

(a) IN GENERAL.—Chapter 5 of title 36, United States Code, is amended by—

(1) redesignating section 510 as section 511; and

(2) inserting after section 509 the following:

"§ 510. Disclosure of and prohibition on certain donations

"(a) IN GENERAL.—A committee shall not be considered to be the Inaugural Committee for purposes of this chapter unless the committee agrees to, and meets, the requirements of subsections (b) and (c).

"(b) DISCLOSURE.—

"(1) IN GENERAL.—Not later than the date that is 90 days after the date of the Presidential inaugural ceremony, the committee shall file a report with the Federal Election Commission disclosing any donation of money or anything of value made to the committee in an aggregate amount equal to or greater than $200.

"(2) CONTENTS OF REPORT.—A report filed under paragraph (1) shall contain—

"(A) the amount of the donation;

"(B) the date the donation is received; and

"(C) the name and address of the person making the donation.

"(c) LIMITATION.—The committee shall not accept any donation from a foreign national (as defined in section 319(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441e(b)))."

(b) REPORTS MADE AVAILABLE BY FEC.—Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434), as amended by sections 103, 201, and 212 is amended by adding at the end the following:

"(h) REPORTS FROM INAUGURAL COMMITTEES.—The Federal Election Commission shall make any report filed by an Inaugural Committee under section 510 of title 36, United States Code, accessible to the public at the offices of the Commission and on the Internet not later than 48 hours after the report is received by the Commission.".

SEC. 309. PROHIBITION ON FRAUDULENT SOLICITATION OF FUNDS.

Section 322 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441h) is amended—

(1) by inserting "(a) IN GENERAL.—" before "No person"; and

(2) by adding at the end the following:

"(b) FRAUDULENT SOLICITATION OF FUNDS.—No person shall—

"(1) fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations; or

"(2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).".

SEC. 310. STUDY AND REPORT ON CLEAN MONEY CLEAN ELECTIONS LAWS.

(a) CLEAN MONEY CLEAN ELECTIONS DEFINED.—In this section, the term "clean money clean elections" means funds received under State laws that provide in whole or in part for the public financing of election campaigns.

(b) STUDY.—

(1) IN GENERAL.—The Comptroller General shall conduct a study of the clean money clean elections of Arizona and Maine.

(2) MATTERS STUDIED.—

(A) STATISTICS ON CLEAN MONEY CLEAN ELECTIONS CANDIDATES.—The Comptroller General shall determine—

(i) the number of candidates who have chosen to run for public office with clean money clean elections including—

(I) the office for which they were candidates;

(II) whether the candidate was an incumbent or a challenger; and

(III) whether the candidate was successful in the candidate's bid for public office; and

(ii) the number of races in which at least one candidate ran an election with clean money clean elections.

(B) EFFECTS OF CLEAN MONEY CLEAN ELECTIONS.—The Comptroller General of the United States shall describe the effects of public financing under the clean money clean elections laws on the 2000 elections in Arizona and Maine.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress detailing the results of the study conducted under subsection (b).

SEC. 311. CLARITY STANDARDS FOR IDENTIFICATION OF SPONSORS OF ELECTION-RELATED ADVERTISING.

Section 318 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441d) is amended—

(1) in subsection (a)

(A) in the matter preceding paragraph (1)—

(i) by striking "Whenever" and inserting "Whenever a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising, or whenever";

(ii) by striking "an expenditure" and inserting "a disbursement";

(iii) by striking "direct"; and

(iv) by inserting "or makes a disbursement for an electioneering communication (as defined in section 304(f)(3))" after "public political advertising"; and

(B) in paragraph (3), by inserting "and permanent street address, telephone number, or World Wide Web address" after "name"; and

(2) by adding at the end the following:

"(c) SPECIFICATION.—Any printed communication described in subsection (a) shall—

"(1) be of sufficient type size to be clearly readable by the recipient of the communication;

"(2) be contained in a printed box set apart from the other contents of the communication; and

"(3) be printed with a reasonable degree of color contrast between the background and the printed statement.

"(d) ADDITIONAL REQUIREMENTS.—

"(1) COMMUNICATIONS BY CANDIDATES OR AUTHORIZED PERSONS.—

"(A) BY RADIO.—Any communication described in paragraph (1) or (2) of subsection (a) which is transmitted through radio shall include, in addition to the requirements of that paragraph, an audio statement by the candidate that identifies the candidate and states that the candidate has approved the communication.

"(B) BY TELEVISION.—Any communication described in paragraph (1) or (2) of subsection (a) which is transmitted through television shall in-

clude, in addition to the requirements of that paragraph, a statement that identifies the candidate and states that the candidate has approved the communication. Such statement—

"(i) shall be conveyed by—

"(I) an unobscured, full-screen view of the candidate making the statement, or

"(II) the candidate in voice-over, accompanied by a clearly identifiable photographic or similar image of the candidate; and

"(ii) shall also appear in writing at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.

"(2) COMMUNICATIONS BY OTHERS.—Any communication described in paragraph (3) of subsection (a) which is transmitted through radio or television shall include, in addition to the requirements of that paragraph, in a clearly spoken manner, the following audio statement: '_____ is responsible for the content of this advertising.' (with the blank to be filled in with the name of the political committee or other person paying for the communication and the name of any connected organization of the payor). If transmitted through television, the statement shall be conveyed by an unobscured, full-screen view of a representative of the political committee or other person making the statement, or by a representative of such political committee or other person in voice-over, and shall also appear in a clearly readable

manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.".

SEC. 312. INCREASE IN PENALTIES.

(a) IN GENERAL.—Subparagraph (A) of section 309(d)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(d)(1)(A)) is amended to read as follows:

"(A) Any person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution, donation, or expenditure—

"(i) aggregating $25,000 or more during a calendar year shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both; or

"(ii) aggregating $2,000 or more (but less than $25,000) during a calendar year shall be fined under such title, or imprisoned for not more than 1 year, or both.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring on or after the effective date of this Act.

SEC. 313. STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Section 406(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 455(a)) is amended by striking "3" and inserting "5".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring on or after the effective date of this Act.

SEC. 314. SENTENCING GUIDELINES.

(a) IN GENERAL.—The United States Sentencing Commission shall—

(1) promulgate a guideline, or amend an existing guideline under section 994 of title 28, United States Code, in accordance with paragraph (2), for penalties for violations of the Federal Election Campaign Act of 1971 and related election laws; and

(2) submit to Congress an explanation of any guidelines promulgated under paragraph (1) and any legislative or administrative recommendations regarding enforcement of the Federal Election Campaign Act of 1971 and related election laws.

(b) CONSIDERATIONS.—The Commission shall provide guidelines under subsection (a) taking into account the following considerations:

(1) Ensure that the sentencing guidelines and policy statements reflect the serious nature of such violations and the need for aggressive and appropriate law enforcement action to prevent such violations.

(2) Provide a sentencing enhancement for any person convicted of such violation if such violation involves—

(A) a contribution, donation, or expenditure from a foreign source;

(B) a large number of illegal transactions;

(C) a large aggregate amount of illegal contributions, donations, or expenditures;

(D) the receipt or disbursement of governmental funds; and

(E) an intent to achieve a benefit from the Federal Government.

(3) Assure reasonable consistency with other relevant directives and guidelines of the Commission.

(4) Account for aggravating or mitigating circumstances that might justify exceptions, includeing circumstances for which the sentencing guidelines currently provide sentencing enhancements.

(5) Assure the guidelines adequately meet the purposes of sentencing under section 3553(a)(2) of title 18, United States Code.

(c) EFFECTIVE DATE; EMERGENCY AUTHORITY TO PROMULGATE GUIDELINES.—

(1) EFFECTIVE DATE.—Notwithstanding section 402, the United States Sentencing Commission shall promulgate guidelines under this section not later than the later of—

(A) 90 days after the effective date of this Act; or

(B) 90 days after the date on which at least a majority of the members of the Commission are appointed and holding office.

(2) EMERGENCY AUTHORITY TO PROMULGATE GUIDELINES.—The Commission shall promulgate guidelines under this section in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under such Act has not expired.

SEC. 315. INCREASE IN PENALTIES IMPOSED FOR VIOLATIONS OF CONDUIT CONTRIBUTION BAN.

(a) INCREASE IN CIVIL MONEY PENALTY FOR KNOWING AND WILLFUL VIOLATIONS.— Section 309(a) of the Federal Election Campaign Act of 1971 (2 U. S.C. 437g(a)) is amended—

(1) in paragraph (5)(B), by inserting before the period at the end the following: "(or, in the case of a violation of section 320, which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $50,000 or 1,000 percent of the amount involved in the violation)"; and

(2) in paragraph (6)(C), by inserting before the period at the end the following: "(or, in the case of a violation of section 320, which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $50,000 or 1,000 percent of the amount involved in the violation)".

(b) INCREASE IN CRIMINAL PENALTY.—Section 309(d)(1) of such Act (2 U.S.C. 437g(d)(1)) is amended by adding at the end the following new subparagraph:

"(D) Any person who knowingly and willfully commits a violation of section 320 involving an amount aggregating more than $10,000 during a calendar year shall be—

"(i) imprisoned for not more than 2 years if the amount is less than $25,000 (and subject to imprisonment under subparagraph (A) if the amount is $25,000 or more);

"(ii) fined not less than 300 percent of the amount involved in the violation and not more than the greater of—

"(I) $50,000; or

"(II) 1,000 percent of the amount involved in the violation; or

"(iii) both imprisoned under clause (i) and fined under clause (ii).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to violations occurring on or after the effective date of this Act.

SEC. 316. RESTRICTION ON INCREASED CONTRIBUTION LIMITS BY TAKING INTO ACCOUNT CANDIDATE'S AVAILABLE FUNDS.

Section 315(i)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(i)(1)), as added by this Act, is amended by adding at the end the following:

"(E) SPECIAL RULE FOR CANDIDATE'S CAMPAIGN FUNDS.—

"(i) IN GENERAL.—For purposes of determining the aggregate amount of expenditures from personal funds under subparagraph (D)(ii), such amount shall include the gross receipts advantage of the candidate's authorized committee.

"(ii) GROSS RECEIPTS ADVANTAGE.—For purposes of clause (i), the term 'gross receipts advantage' means the excess, if any, of—

"(I) the aggregate amount of 50 percent of gross receipts of a candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held, over

"(II) the aggregate amount of 50 percent of gross receipts of the opposing candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held.".

SEC. 317. CLARIFICATION OF RIGHT OF NATIONALS OF THE UNITED STATES TO MAKE POLITICAL CONTRIBUTIONS.

Section 319(b)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441e(b)(2)) is amended by inserting after "United States" the following: "or a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act)".

SEC. 318. PROHIBITION OF CONTRIBUTIONS BY MINORS.

Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.), as amended by section 101,

is further amended by adding at the end the following new section:

"PROHIBITION OF CONTRIBUTIONS BY MINORS

"SEC. 324. An individual who is 17 years old or younger shall not make a contribution to a candidate or a contribution or donation to a committee of a political party.".

SEC. 319. MODIFICATION OF INDIVIDUAL CONTRIBUTION LIMITS FOR HOUSE CANDIDATES IN RESPONSE TO EXPENDITURES FROM PERSONAL FUNDS

(a) INCREASED LIMITS.—Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by inserting after section 315 the following new section:

"MODIFICATION OF CERTAIN LIMITS FOR HOUSE CANDIDATES IN RESPONSE TO PERSONAL FUND EXPENDITURES OF OPPONENTS

"SEC. 315A. (a) AVAILABILITY OF INCREASED LIMIT.—

"(1) IN GENERAL.—Subject to paragraph (3), if the opposition personal funds amount with respect to a candidate for election to the office of Representative in, or Delegate or Resident Commissioner to, the Congress exceeds $350,000—

"(A) the limit under subsection (a)(1)(A) with respect to the candidate shall be tripled;

"(B) the limit under subsection (a)(3) shall not apply with respect to any contri-

bution made with respect to the candidate if the contribution is made under the increased limit allowed under subparagraph (A) during a period in which the candidate may accept such a contribution; and

"(C) the limits under subsection (d) with respect to any expenditure by a State or national committee of a political party on behalf of the candidate shall not apply.

"(2) DETERMINATION OF OPPOSITION PERSONAL FUNDS AMOUNT.—

"(A) IN GENERAL.—The opposition personal funds amount is an amount equal to the excess (if any) of—

"(i) the greatest aggregate amount of expenditures from personal funds (as defined in subsection (b)(1)) that an opposing candidate in the same election makes; over

"(ii) the aggregate amount of expenditures from personal funds made by the candidate with respect to the election.

"(B) SPECIAL RULE FOR CANDIDATE'S CAMPAIGN FUNDS.—

"(i) IN GENERAL.—For purposes of determining the aggregate amount of expenditures from personal funds under subparagraph (A), such amount shall include the gross receipts advantage of the candidate's authorized committee.

"(ii) GROSS RECEIPTS ADVANTAGE.—For purposes of clause (i), the term 'gross receipts advantage' means the excess, if any, of—

"(I) the aggregate amount of 50 percent of gross receipts of a candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held, over

"(II) the aggregate amount of 50 percent of gross receipts of the opposing candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held.

"(3) TIME TO ACCEPT CONTRIBUTIONS UNDER INCREASED LIMIT.—

"(A) IN GENERAL.—Subject to subparagraph (B), a candidate and the candidate's authorized committee shall not accept any contribution, and a party com-

mittee shall not make any expenditure, under the increased limit under paragraph (1)—

"(i) until the candidate has received notification of the opposition personal funds amount under subsection (b)(1); and

"(ii) to the extent that such contribution, when added to the aggregate amount of contributions previously accepted and party expenditures previously made under the increased limits under this subsection for the election cycle, exceeds 100 percent of the opposition personal funds amount.

"(B) EFFECT OF WITHDRAWAL OF AN OPPOSING CANDIDATE.—A candidate and a candidate's authorized committee shall not accept any contribution and a party shall not make any expenditure under the increased limit after the date on which an opposing candidate ceases to be a candidate to the extent that the amount of such increased limit is attributable to such an opposing candidate.

"(4) DISPOSAL OF EXCESS CONTRIBUTIONS.—

"(A) IN GENERAL.—The aggregate amount of contributions accepted by a candidate or a candidate's authorized committee under the increased limit under paragraph (1) and not otherwise expended in connection with the election with respect to which such contributions relate shall, not later than 50

days after the date of such election, be used in the manner described in subparagraph (B).

"(B) RETURN TO CONTRIBUTORS.—A candidate or a candidate's authorized committee shall return the excess contribution to the person who made the contribution.

"(b) NOTIFICATION OF EXPENDITURES FROM PERSONAL FUNDS.—

"(1) IN GENERAL.—

"(A) DEFINITION OF EXPENDITURE FROM PERSONAL FUNDS.—In this paragraph, the term 'expenditure from personal funds' means—

"(i) an expenditure made by a candidate using personal funds; and

"(ii) a contribution or loan made by a candidate using personal funds or a loan secured using such funds to the candidate's authorized committee.

"(B) DECLARATION OF INTENT.—Not later than the date that is 15 days after the date on which an individual becomes a candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, the candidate shall file a declaration stating the total amount of expenditures from personal funds that the candidate intends to make, or to obligate to make, with respect to the election that will exceed $350,000.

"(C) INITIAL NOTIFICATION.—Not later than 24 hours after a candidate described in

subparagraph (B) makes or obligates to make an aggregate amount of expenditures from personal funds in excess of $350,000 in connection with any election, the candidate shall file a notification.

"(D) ADDITIONAL NOTIFICATION.—After a candidate files an initial notification under subparagraph (C), the candidate shall file an additional notification each time expenditures from personal funds are made or obligated to be made in an aggregate amount that exceeds $10,000. Such notification shall be filed not later than 24 hours after the expenditure is made.

"(E) CONTENTS.—A notification under subparagraph (C) or (D) shall include—

"(i) the name of the candidate and the office sought by the candidate;

"(ii) the date and amount of each expenditure; and

"(iii) the total amount of expenditures from personal funds that the candidate has made, or obligated to make, with respect to an election as of the date of the expenditure that is the subject of the notification.

"(F) PLACE OF FILING.—Each declaration or notification required to be filed by a candidate under subparagraph (C), (D), or (E) shall be filed with—

"(i) the Commission; and

"(ii) each candidate in the same election and the national party of each such candidate.

"(2) NOTIFICATION OF DISPOSAL OF EXCESS CONTRIBUTIONS.—In the next regularly scheduled report after the date of the election for which a candidate seeks nomination for election to, or election to, Federal office, the candidate or the candidate's authorized committee shall submit to the Commission a report indicating the source and amount of any excess contributions (as determined under subsection (a)) and the manner in which the candidate or the candidate's authorized committee used such funds.

"(3) ENFORCEMENT.—For provisions providing for the enforcement of the reporting requirements under this subsection, see section 309."

(b) CONFORMING AMENDMENT.—Section 315(a)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a), as amended by section 304(a), is amended by striking "subsection (i)," and inserting "subsection (i) and section 315A,".

TITLE IV—SEVERABILITY; EFFECTIVE DATE

SEC. 401. SEVERABILITY.

If any provision of this Act or amendment made by this Act, or the application of a provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and amendments made by this Act, and the application of the provisions and amendment to any person or circumstance, shall not be affected by the holding.

SEC. 402. EFFECTIVE DATES AND REGULATIONS.

(a) GENERAL EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in the succeeding provisions of this section, the effective date of this Act, and the amendments made by this Act, is November 6, 2002.

(2) MODIFICATION OF CONTRIBUTION LIMITS.—The amendments made by—

(A) section 102 shall apply with respect to contributions made on or after January 1, 2003; and

(B) section 307 shall take effect as provided in subsection (e) of such section.

(3) SEVERABILITY; EFFECTIVE DATES AND REGULATIONS; JUDICIAL REVIEW.—Title IV shall take effect on the date of enactment of this Act.

(4) PROVISIONS NOT TO APPLY TO RUNOFF ELECTIONS.—Section 323(b) of the Federal Election Campaign Act of 1971 (as added by section 101(a)), section 103(a), title II, sections 304 (including section 315(j) of Federal Election Campaign Act of 1971, as added by section 304(a)(2)), 305 (notwithstanding subsection (c) of such section), 311, 316, 318, and 319, and title V (and the amendments made by such sections and titles) shall take effect on November 6, 2002, but shall not apply with respect to runoff elections, recounts, or election contests resulting from elections held prior to such date.

(b) SOFT MONEY OF NATIONAL POLITICAL PARTIES.—

(1) IN GENERAL.—Except for subsection (b) of such section, section 323 of the Federal Election Campaign Act of 1971 (as added by section 101(a)) shall take effect on November 6, 2002.

(2) TRANSITIONAL RULES FOR THE SPENDING OF SOFT MONEY OF NATIONAL POLITICAL PARTIES.—

(A) IN GENERAL.—Notwithstanding section 323(a) of the Federal Election Campaign Act of 1971 (as added by section 101(a)), if a national committee of a political party described in such section (including any person who is subject to such section under paragraph (2) of such section), has received funds described in such section prior to November 6, 2002, the rules described in subparagraph (B) shall apply with respect to the spending of the amount of such funds in the possession of such committee as of such date.

(B) USE OF EXCESS SOFT MONEY FUNDS.—

(i) IN GENERAL.—Subject to clauses (ii) and (iii), the national committee of a political party may use the amount described in subparagraph (A) prior to January 1, 2003, solely for the purpose of—

(I) retiring outstanding debts or obligations that were incurred solely in connection

with an election held prior to November 6, 2002; or

(II) paying expenses or retiring outstanding debts or paying for obligations that were incurred solely in connection with any runoff election, recount, or election contest resulting from an election held prior to November 6, 2002.

(ii) PROHIBITION ON USING SOFT MONEY FOR HARD MONEY EXPENSES, DEBTS, AND OBLIGATIONS.—A national committee of a political party may not use the amount described in subparagraph (A) for any expenditure (as defined in section 301(9) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(9))) or for retiring outstanding debts or obligations that were incurred for such an expenditure.

(iii) PROHIBITION OF BUILDING FUND USES.—A national committee of a political party may not use the amount described in subparagraph (A) for activities to defray the costs of the construction or purchase of any office building or facility.

(c) REGULATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Federal Election Commission shall promulgate regulations to carry out this Act and the amendments made by this Act that are

under the Commission's jurisdiction not later than 270 days after the date of enactment of this Act.

(2) SOFT MONEY OF POLITICAL PARTIES.—Not later than 90 days after the date of enactment of this Act, the Federal Election Commission shall promulgate regulations to carry out title I of this Act and the amendments made by such title.

SEC. 403. JUDICIAL REVIEW.

(a) SPECIAL RULES FOR ACTIONS BROUGHT ON CONSTITUTIONAL GROUNDS.—If any action is brought for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act, the following rules shall apply:

(1) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.

(2) A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives and the Secretary of the Senate.

(3) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, of the entry of the final decision.

(4) It shall be the duty of the United States District Court for the District of Columbia and the

Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

(b) INTERVENTION BY MEMBERS OF CONGRESS.—In any action in which the constitutionality of any provision of this Act or any amendment made by this Act is raised (including but not limited to an action described in subsection (a)), any member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress) or Senate shall have the right to intervene either in support of or opposition to the position of a party to the case regarding the constitutionality of the provision or amendment. To avoid duplication of efforts and reduce the burdens placed on the parties to the action, the court in any such action may make such orders as it considers necessary, including orders to require intervenors taking similar positions to file joint papers or to be represented by a single attorney at oral argument.

(c) CHALLENGE BY MEMBERS OF CONGRESS.—Any Member of Congress may bring an action, subject to the special rules described in subsection (a), for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act.

(d) APPLICABILITY.—

(1) INITIAL CLAIMS.—With respect to any action initially filed on or before December 31, 2006, the provisions of subsection (a) shall apply with respect to each action described in such section.

(2) SUBSEQUENT ACTIONS.—With respect to any action initially filed after December 31, 2006, the provisions of subsection (a) shall not apply to

any action described in such section unless the person filing such action elects such provisions to apply to the action.

TITLE V—ADDITIONAL DISCLOSURE PROVISIONS

SEC. 501. INTERNET ACCESS TO RECORDS.

Section 304(a)(11)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)(11)(B)) is amended to read as follows:

"(B) The Commission shall make a designation, statement, report, or notification that is filed with the Commission under this Act available for inspection by the public in the offices of the Commission and accessible to the public on the Internet not later than 48 hours (or not later than 24 hours in the case of a designation, statement, report, or notification filed electronically) after receipt by the Commission.".

SEC. 502. MAINTENANCE OF WEBSITE OF ELECTION REPORTS.

(a) IN GENERAL.—The Federal Election Commission shall maintain a central site on the Internet to make accessible to the public all publicly available election-related reports and information.

(b) ELECTION-RELATED REPORT.—In this section, the term "election-related report" means any report, designation, or statement required to be filed under the Federal Election Campaign Act of 1971.

(c) COORDINATION WITH OTHER AGENCIES.—Any Federal executive agency receiving election-related information which that agency is required by law to publicly disclose shall cooperate and coordinate with the Federal Election Commission to make such

report available through, or for posting on, the site of the Federal Election Commission in a timely manner.

SEC. 503. ADDITIONAL DISCLOSURE REPORTS.

(a) PRINCIPAL CAMPAIGN COMMITTEES.—Section 304(a)(2)(B) of the Federal Election Campaign Act of 1971 is amended by striking "the following reports" and all that follows through the period and inserting "the treasurer shall file quarterly reports, which shall be filed not later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter, except that the report for the quarter ending December 31 shall be filed not later than January 31 of the following calendar year.".

(b) NATIONAL COMMITTEE OF A POLITICAL PARTY.—Section 304(a)(4) of such Act (2 U.S.C. 434(a)(4)) is amended by adding at the end the following flush sentence: "Notwithstanding the preceding sentence, a national committee of a political party shall file the reports required under subparagraph (B).".

SEC. 504. PUBLIC ACCESS TO BROADCASTING RECORDS.

Section 315 of the Communications Act of 1934 (47 U.S.C. 315), as amended by this Act, is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and inserting after subsection (d) the following:

"(e) POLITICAL RECORD.—

"(1) IN GENERAL.—A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that—

"(A) is made by or on behalf of a legally qualified candidate for public office; or

"(B) communicates a message relating to any political matter of national importance, including—

"(i) a legally qualified candidate;

"(ii) any election to Federal office; or

"(iii) a national legislative issue of public importance.

"(2) CONTENTS OF RECORD.—A record maintained under paragraph (1) shall contain information regarding—

"(A) whether the request to purchase broadcast time is accepted or rejected by the licensee;

"(B) the rate charged for the broadcast time;

"(C) the date and time on which the communication is aired;

"(D) the class of time that is purchased;

"(E) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

"(F) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

"(G) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

"(3) TIME TO MAINTAIN FILE.—The information required under this subsection shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years.".

Approved March 27, 2002.

Supreme Court, U.S.
FILED
MAY 29 2003
OFFICE OF THE CLERK

(2)

No. 02-1676

IN THE

Supreme Court of the United States

FEDERAL ELECTION COMMISSION, *et al.*

Appellants

vs.

SENATOR MITCH McCONNELL, *et al.*

Appellees.

On Appeal from the United States
District Court for the District of Columbia

Joint Motion to Affirm Summarily

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QUESTIONS PRESENTED

Prior to the effective date of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81, minors had the right to contribute to the committees of political parties and to candidates for federal office, subject to the same limitations that also applied to persons that had attained their majority. Section 318 of BCRA completely prohibits donations to committees and to candidates by minors. In the view of these Appellees, all of whom are minors, the question presented is:

> Whether the three judge district court erred in its judgment that the absolute ban on donations by minors was unconstitutional?

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In the Supreme Court of the United States

No. 02-1676

FEDERAL ELECTION COMMISSION, *et al.*, *Appellants*

vs.

SENATOR MITCH MCCONNELL, *et al.*, *Appellees.*

On Appeal from the United States District Court for the District of Columbia

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Joint Motion to Affirm Summarily

The minor Appellees, by their next friends, move this Court pursuant to Supreme Court Rule 18.6 for an Order summarily affirming the judgment of the three judge court of the United States District Court for the District of Columbia, which held that Section 318 of BCRA is unconstitutional.

As set forth within, the questions regarding the constitutionality of Section 318 of BCRA are so well-settled in the precedents of this Court that plenary review of the judgment striking Section 318 as unconstitutional is unwarranted.

STATEMENT OF THE CASE

1. Section 318 of the Act–

The Federal Election Campaign Act ("FECA") directly prohibits any person from making political contributions in the name of another. Title 2 U.S.C. § 441f (2002). That prohibition encompasses contributions made by a parent in

the name of their minor child. FECA also directly prohibits any person from exceeding the maximum permitted political contribution. 2 U.S.C. § 441a. That limitation prevents the parent or guardian of a minor child from exceeding limitations on contributions by the ruse of donating in the name of their minor child. Thus, prior to the enactment of BCRA, federal law already prohibited circumventing campaign limits by making gifts in the names of children.

There was no evidence to suggest the need for such a flat ban. In fulfillment of its statutory enforcement responsibilities, the Federal Election Commission ("FEC") has investigated only the barest handful of instances of parental donations in the names of minor children.[1] Moreover, Congress made no factual findings in BCRA regarding problems related to donations by minors to the committees of political parties or to candidates in BCRA. Section 318 was added to the Act while the proposal was pending in the House. No explanation for the provision was offered during debate there.[2] The only explanation offered for the ban came during the Senate debate on the Act.[3] There, Senator John McCain stated that the ban was needed

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1. The Federal Election Commission admitted in discovery below that one percent or fewer of its investigatory "Matters Under Review" "involved covered political contributions by minors or by parents made in the name of the minor children."

2. The Appellants acknowledged below the absence of any explanation related to this provision in the House debates on BCRA.

3. *See* 148 Cong. Rec. S2145-46 (daily ed. March 20, 2002) (statement of Sen. McCain).

to address the problem of parental circumvention of donation limitations by giving contributions in the names of their minor children.[4]

Nonetheless, when it enacted BCRA, Congress included Section 318, which amends FECA by adding to it a new section 324, prohibiting anyone seventeen years of age or younger from making any contribution to a candidate, or a contribution or donation to a national or state political party committee:

> An individual who is 17 years old or younger shall not make a contribution to a candidate or a contribution to a committee of a political party.

Title III, § 318, H.R. 2356, 107th Cong. (2002) (enacted); FEC Jurisdictional Statement at 71a. Judge Henderson, in her separate opinion below, described Section 318 as "fall[ing] into the category of 'who knows where it came from.'" *See* Op. of Henderson, J., at 326; Supplemental Appendix to Jurisdictional Statements at 461sa ("Supp. App.").

2. The Decision Below–

The three-judge panel unanimously agreed that Section 318 violated the Constitution:

> Section 318 prohibits donations by minors to federal candidates, or to a committee of a political party. All

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4. *See* 148 Cong. Rec. S2145-48 (daily ed. March 20, 2002) (statement of Sen. McCain).

> three judges agree that this section is unconstitutional. Each judge writes a separate concurrence setting forth his/her reasoning as to this section.

Per Curiam Op. at 11; Supp. App. 9sa. As indicated, all three judges wrote separately to explain their reasoning for that conclusion.

Judge Henderson concluded that whether analyzed under strict scrutiny or under "*Buckley* scrutiny," Section 318 was unconstitutional. In Judge Henderson's view, the Appellants' arguments for the constitutionality of Section 318 failed for two principal reasons:

> First, section 318 does not serve any governmental interest, much less a "sufficiently important" or "compelling" one.
>
> * * * *
>
> Second, even if section 318 served to prevent actual or apparent corruption of federal candidates in a material way not served by existing law, the provision could not be sustained because—far from being "closely drawn" or "narrowly tailored"—it is grossly overbroad.

Op. of Henderson, J. at 328, 331; Supp. App. 462sa, 465sa. In addition, Judge Henderson found that the evidence proffered to justify Section 318 as a tool to prevent corruption "is remarkably thin." Op. of Henderson, J. at 329, Supp. App. 463sa.

Judge Kollar-Kotelly, like Judge Henderson, found it unnecessary to decide between strict scrutiny or "*Buckley*

scrutiny." In Judge Kollar-Kotelly's view, "Defendants have failed to present sufficient evidence to establish that parents' use of minors to circumvent campaign finance laws serves an important government interest." Op. of Kollar-Kotelly at 611, Supp. App. 1009sa. *See also id.*; Supp. App. 1010sa ("the evidence presented is insufficient to support government action that abridges constitutional freedoms").

Judge Leon, while concurring in the conclusion of Judges Henderson and Kollar-Kotelly that Section 318 was unconstitutional, wrote "only to explain why [he] believe[d] th[e] Court should evaluate this provision under the strict-scrutiny standard of review." Op. of Leon, J., at 106; Supp. App. 1177sa.

3. Facts Relevant to the Challenge to Section 318

a. *Echols v. FEC*

Appellees Emily Echols, Daniel Solid, Hannah and Isaac McDow, Jessica Mitchell, and Zachary White are citizens of the United States. Echols, Solid and White reside in Georgia, the McDows reside in Alabama, and Mitchell resides in Florida. Each of them is aged seventeen years or younger. These Appellees are seriously interested in government, politics, and campaigning. Their interest is demonstrable, having, amongst them, participated in campaigns as volunteers, assembled signs, distributed literature, walked precincts, even traveling great distances to campaign door-to-door for candidates they support. In such ways and others, they have shown their commitment to using their rights to freedom of association and expression to effect political changes in accord with their beliefs and opinions.

These minors possess monies that they have earned – either by working outside their homes or by performing chores around their homes for pay – or that they received as gifts. No portion of these monies consists of funds given to them for the purpose of making political contributions. The parents of the Echols plaintiffs are aware of the federal campaign laws and the restrictions they impose; and they have obeyed those laws.

For these young citizens, contributing money to candidates and to the committees of political parties are forms of expression of support for those candidates and committees. Moreover, by making such contributions of money, they have already associated with those selected candidates and committees of political parties. The minors Appellees plan to, and intend to, exercise their rights of political association and expression by making candidate and committee contributions, during their minority, into the future. But for the enactment of Section 318 and its ban on such political contributions by them, they would be free to do so.

b. *McConnell v. FEC*

Appellee Barret Austin O'Brock is a minor living in Louisiana.[5] He declared his general intention to contribute

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5. In the court below, Trevor M. Southerland, then a minor, also challenged Section 318. On May 28, 2003, Mr. Southerland attained his majority. Consequently Section 318 no longer deprives him of the rights to freedom of speech and association that he complained of, and vindicated below. Although he has reached his majority, the claim in the *McConnell* litigation was brought by him and by Barret

to federal candidates in future elections, including in the 2002 and 2004 election. Specifically, he stated his intention to contribute at least $20 of his own money (not received from any other person for purposes of the contribution) to John Milkovich, a candidate for U.S. Representative for the Fourth Congressional District of Louisiana, prior to the November 2002 general election. Barret knows candidate Milkovich personally because the candidate was Barret's Sunday School teacher for two years.

SUMMARY OF ARGUMENT

The day is long past when America's teenagers and children may be consigned to constitutional steerage, there to "enjoy" all the benefits of third class citizenship. As early as *West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624 (1943), it has been without question that American children are "whole persons" in the constitutional sense. Concomitantly, they possess the same constitutional rights and liberties as adults, even if, in certain circumstances, such as the special case of public schools, the contours of those rights vary slightly from the rights of their adult counterparts. *See Tinker v. Des Moines Ind. Comm. Sch. Dist.*, 393 U.S. 503, 511 (1969).

O'Brock, who is still in his minority, and by the plaintiff minors in the *Echols* litigation, all of whom are also still in their minority. Consequently, the apparent mootness of Mr. Southerland's claim does not render moot the judgment below that Section 318 is unconstitutional; nor does his majority warrant an Order vacating the injunction against enforcement of Section 318 as to those Appellees still in their minority.

Nonetheless, in a stunning strike against those rights, Congress enacted the complete ban embodied in Section 318. All three of the judges below agreed that Section 318 was unconstitutional. A majority – Judges Henderson and Kollar-Kotelly – agreed that it was unnecessary to decide whether a more or less stringent standard of review applied because of the flagrant unconstitutionality of the flat ban. Judge Leon did not disagree with that view, but instead focused on the reasons for applying strict scrutiny to Section 318.

The flat ban on donations by minors to political party committees and to candidates flouts several constitutional norms relevant to laws affecting associational freedoms and expression. In accord with this Court's decision in *Buckley v. Valeo*, 424 U.S. 1, 24-25 (1976), the ban on all political contributions by minors is subject to the closest scrutiny.[6] But even if the ban is subjected to the lesser scrutiny applied to donation limitations in *Buckley*, the court below correctly concluded that it could not withstand such scrutiny.

The ban is severely flawed. It is not drawn in service of a sufficiently important government interest. Even assuming a sufficiently compelling justification for Congress to act, the ban on political contributions by minors is not drawn

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6. As explained in *Buckley*, 424 U.S. at 16-18, Section 318 must be subjected to something more than the scrutiny embodied in *United States v. O'Brien*, or the time, place and manner analysis employed in the Public Forum cases, *e.g.*, *United States v. Grace*, 461 U.S. 171 (1983).

narrowly in service of the government interests at stake.

ARGUMENT

I. SECTION 318 VIOLATES MINORS' CONSTITUTIONAL RIGHTS

As a matter of first principles, a complete ban on political contributions strikes directly at the heart of the First Amendment. As this Court explained, in addressing statutory ceilings on the amount of personal contributions: "The Act's contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities." *Buckley v. Valeo*, 424 U.S. 1, 14 (1976). Nothing in *Buckley* or its progeny suggests that the injury of such a flat prohibition on even token contributions is felt any less keenly by, or inflicts less grievously a wound upon the rights of, citizens of the United States who are in their minority.

A. MINORS POSSESS FIRST AMENDMENT RIGHTS OF FREEDOM OF ASSOCIATION AND SPEECH.[7]

If, as this Court has said, student do not "shed their Constitutional rights to freedom of speech or expression at the schoolhouse gate," *Tinker v. Des Moines Ind. Comm. Sch. Dist.*, 393 U.S. 503, 511 (1969), then there can be no question that they possess those rights before they pass

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7. This case does not address the lawful authority of parent or guardians over minors in their care and under their control, but rather, it addresses the imposition by Congress of a complete ban on the exercise by minors of rights of speech and association.

through those gates. Here, as with analogous contributions by their adult counterparts, the political contributions of minors are, at a minimum, an exercise of the constitutional right to political association. *Buckley*, 424 U.S. at 15 ("The First Amendment protects political association as well as political expression;" "[T]he First and Fourteenth Amendments guarantee freedom to associate with others for the common advancement of political beliefs and ideas") (citations and internal quotation marks omitted). For these minors, contributions to candidates and committees of political parties serve to express support for and association with selected candidates and committees.[8]

In *Bellotti v. Baird*, 443 U.S. 622, 634 (1979), the Court noted that government intrusion into a minor's fundamental

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8. Of course, special circumstances exist in which the exact dimensions of the constitutional rights enjoyed by minors vary from those of their adult counterparts. *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 214 n.11 (1975). Most of the cases discussing the questions related to minors' First Amendment rights, for example, arise in the special environment of the school. But even there, this Court has stated that "[s]tudents in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect[.]" *Tinker*, 393 U.S. at 511. Other special circumstances include, for example, restricting minors' access to obscene materials, *see, e.g., Ginsberg v. New York*, 390 U.S. 629, 637-38 (1968); restricting minors' access to abortion, *see, e.g., Bellotti v. Baird*, 443 U.S. 622, 634 (1979). *Cf. Dallas v. Stanglin*, 490 U.S. 19, 24-25 (1989) (upholding City's adoption of special use classifications for dance halls to prevent juvenile crime and victimization) (classification subject to rational basis scrutiny because no fundamental right impinged or suspect category created).

rights may be justified based on "the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing." None of those special circumstances, however, is implicated by this statutory restriction on core First Amendment rights.

The Government makes the novel argument, see Jurisdictional Statement at 28, FEC v. McConnell (docketed May 15, 2003), that "any First Amendment interests that minors may have in participating in the financing of federal elections is substantially limited by the fact that minors have no constitutional right to vote in such elections." Unsurprisingly, the Government does not rely on any decision of this Court (or, for that matter, of any other court) for this proposition. It is insupportable and without merit. While it is true that minors do not possess the right to vote, it is just as true that they pay taxes and possess the right to freedom of speech and of association. No limiting principle is enunciated in the Government's standard to prevent the suppression of rights of expression in a variety of circumstances.

In the absence of such a limiting principle, the most unacceptable and unconscionable results follow in any case where a government program or action affects selected groups or individuals, but leaves unaffected others who may, nonetheless, hold views or opinions that they would express about the Government's action. Women, for example, are not required to register for selective service. In this sense, women are not affected by the registration requirement.

According to the Government's approach, the federal government could suppress the speech and associational rights of a group of mothers of draft-eligible young men. Other examples clamor for attention. Men, using the Government's rationale, could be silenced in either their support for or opposition to abortion rights, because, after all, men cannot become pregnant. All persons in the United States who are not the descendants of African Americans once held in involuntary servitude could be silenced on the question of whether a government program of reparations should be undertaken.

The Government's rationale fails to account for the terms of the First Amendment, which do not admit of an entire exception from protection for minors. Nor does the Government seek to square its approach with the decisions of this Court that have recognized that minors are persons in the constitutional sense and possess rights under the First Amendment. The Government casually ignores the certainty that even if minors are not protected from discrimination on the basis of age in voting, every federal election in this Nation is a matter of significance to them and to their future. The examples cited above, and the multitude more that can readily be drawn from a topical index of cases decided by this Court or the Popular Names Table of United States Statutes, adequately dispose of the simplistic "they can't vote so they don't count" approach taken by the Government.

B. There Is No Sufficiently Compelling Governmental Interest to Justify the Denial of Minors' Constitutional Rights of Speech and Association.

To discern whether Congress has gone too far in banning political contributions by minors, it is essential to ask what Congress sought to accomplish. Apparently, Congress sought to address parental circumvention of donation limitations and channeling of gifts. In the court below, the Appellants offered various justifications in defense of Section 318, including avoiding corruption and the appearance of it, assuring the legitimacy of the electoral system, preventing circumvention of campaign contribution limits, facilitating deterrence and detection of violations of federal campaign limitations, and restoring public faith in the system.

The concern about circumvention of donation limitations by wealthy parents using the names of their minor children – to which Senator McCain adverted on the Senate floor[9] – is unsupported by any substantial evidence. Both Judge Henderson and Judge Kollar-Kotelly took note of the "thinness" of the evidence supporting the need for Section 318. Judge Henderson found "the government's evidence of corruption-by-conduit . . . remarkably thin . . . ." Op. of Henderson, J., at 329; Supp. App. 463sa. Judge Kollar-Kotelly noted, the Government "failed to present sufficient evidence to establish that parents' use of minors to circumvent campaign finance laws serves an important

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9. *See* nn. 3-4 , *supra* and accompanying text.

governmental interest . . . ." Op. of Kollar-Kotelly, J., at 611; Supp. App. 1009sa. In light of that failure, Judge Kollar-Kotelly concluded, "the minimal evidence presented does not establish that circumvention of campaign finance laws by parents of minors supports the required governmental interest." Op. of Kollar-Kotelly, J., at 612; Supp. App. 1011sa.

Even assuming that a statutory regimen may have been necessary to remediate the unsubstantiated problems of parental circumvention and excess giving, Section 318 is unjustifiable. A statutory ban on political contributions by minors burdens substantially more political association and speech than necessary precisely because its proscriptions apply to individuals who never have engaged in prior unlawful behavior.

The minors' donations to committees and candidates embody classic exercises of the right to freedom of political association and freedom of speech. No *valid* government interest supports this ban. Such a complete ban was not at issue in *Buckley*. Instead, because FECA permitted a contribution in some amount, this Court concluded that the ceiling on such contributions survived scrutiny. Here, Congress utterly prohibits even a token donation. That complete prohibition, to the contrary of the FECA *limitations* at stake in *Buckley*, encompasses so much speech and association unrelated to any regulable evil that it is "substantially broader than necessary to achieve the interests justifying it." *Ward v. Rock Against Racism*, 491 U.S. 781, 799 n.7 (1989).

Nor can concerns about abuses by a few parents, who might circumvent restrictions on their own donations by using their minor children as surrogates, justify a flat ban on contributions by minors. Such circumvention is already illegal under FECA provisions predating BCRA and not challenged in this litigation. *See* Title 2 U.S.C. §§ 441a and 441f (2002). Moreover, the gift of money by a minor need not come *from* parental sources or *at* parental direction. For example, Jessica Mitchell, one of the minor Appellees in this case, donated money to a candidate for the United States House of Representatives that she had earned from a small pet care business that she and a friend started in their neighborhood. Each of the other minors, likewise, has monies that were not received as part of a scheme or plan of their parents to circumvent FECA's limitations on contribution amounts. Yet donations by the minor Appellees are barred by Section 318.

Oddly absent from the justifications proffered by the Appellants below is any assertion that money from minors is, in its essence, corrupting or evil. In fact, the proffered justifications exclusively focus on the alleged abuses of parents, which abuses already are directly prohibited by FECA. Moreover, the Government's interest in preventing corruption or the appearance of corruption is no greater (and arguably much less) with respect to minors than with respect to adults. If any contribution is corrupting, then all contributions should be banned: contributions of all sizes, contributions from all sources.

Plainly, the government interest in preventing parents from circumventing contribution limits by channeling

additional contributions through their children is not sufficiently compelling to justify Section 318.

C. Section 318 Is Not Narrowly Tailored to the Asserted Governmental Interest.

Two aspects on the statute are significant to an appropriate constitutional analysis of the fit between the asserted government purposes of the ban and the means chosen to serve them. First, the ban applies to individual minors whether or not their exercise of associational expression and free speech have threatened the interests identified by the Appellants. These minors are barred from symbolically expressing their association with candidates and committees by even token donations despite the utter lack of evidence that these minors have subverted campaign finance limitations, or that their parents or guardian have used them for that purpose. The ban applies to all gifts by minors even though there is no reason to conclude that such gifts, taken individually or in the aggregate, either by their nature or practice, works injury to the identified government interests.

Second, unlike the direct bans on giving contributions in the name of another, 2 U.S.C. § 441f (2002), and on exceeding limitations on contribution amounts, 2 U.S.C. § 441a(a)(1)(A), the ban on contributions by minors works a *prophylactic* suppression of constitutionally protected rights of minors. As this Court has repeatedly admonished, however, "broad prophylactic rules in the area of free expression are suspect." *NAACP v. Button*, 371 U.S. 415, 458 (1963).

In *Buckley*, of course, this Court upheld personal contributions *ceilings*, not a complete ban. A *ban* on such gifts could not, however, pass muster. In fact, one of the signal justifications offered in *Buckley* for a contribution ceiling was that a ceiling left donors free to make some donation:

> A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution . . . .

424 U.S. at 21. A *ban* that entirely prevents a minor from giving "to a candidate or campaign," does not "permit[] the symbolic expression of support evidenced by a contribution."

What is called for in this analysis is an examination of the fit between purpose and means. For example, in *Members of the City Council v. Taxpayers for Vincent*, 466 U.S. 789, 810 (1984), the Court upheld an ordinance that prohibited the posting of signs on public property, but only after concluding that the ordinance "responds precisely to the substantive problem [of visual blight] that concerns the City." That cannot be said of the contribution ban; it closely resembles the anti-littering law struck down in *Schneider v. State*, 308 U.S. 147 (1939). There, as here, the state "could have addressed the substantive evil without prohibiting expressive activity," or adopting a "prophylactic rule." *Taxpayers for Vincent*, 466 U.S. at 810. Similarly, *Ward v. Rock Against Racism*, 491 U.S. 781 (1989), and *Clark v. Community for*

Creative Nonviolence, 468 U.S. 288 (1984), also assume a fit between means and ends that is lacking here. Thus, in *Ward*, an ordinance requiring that city employees operate sound amplification equipment was upheld because it directly advanced the city's interest in controlling noise. 491 U.S. at 800. Likewise, in *Clark*, a regulation barring protesters from sleeping in a park was upheld because it "narrowly focused on the Government's substantial interest in maintaining the parks in the heart of our Capitol in an attractive and intact condition." 468 U.S. at 296.

These cases all show that Congress must craft its statutes narrowly when regulating constitutional rights, and must limit its interests to those unrelated to the suppression of expression. *Buckley*, 424 U.S. at 17-18. Below, the Appellants identified the interests supposedly served by the statute. Unfortunately, the ban is not closely drawn to promote those interests. Instead, it focuses directly on expressive activities. It thus burdens substantially more speech than necessary to accomplish the state's goal and cannot be sustained.

The interests identified by the Appellants go to abuses by persons other than minors. But the ban targets constitutional exercises by minors. Consequently the ban does not target the "evil" – namely, circumvention or corruption – that motivated Congress to enact it. *Cf. Frisby v. Schultz*, 487 U.S. 474, 485 (1988) ("complete ban can be narrowly tailored . . . only if each activity within the proscription's scope is an appropriately targeted evil"). Of course, Congress can address circumvention and corruption problems directly; indeed, it already has done so with its

enactment of 2 U.S.C. §§ 441a and 441f (2002).

Neither the minor Appellees nor their parents have challenged those existing provisions of FECA. Those unchallenged and existing restrictions directly serve the interests that are, at best, only obliquely served by Section 318's ban on political contributions by minors. Instead, the minors' ban goes further and in a different direction entirely. Section 318 prohibits minors' political contributions, even when such contributions are not made in circumvention of FECA's contribution limits. It prohibits contributions of emancipated minors. It prohibits contributions by orphaned minors. And it prohibits contributions of those minors who, with consent of their parents, have enlisted in the United States Armed Forces.[10]

These minors "are not quibbling over fine-tuning of prophylactic limitations, but are concerned about wholesale restriction of clearly protected conduct." *FEC v. National Conservative PAC*, 470 U.S. 480, 501 (1985). The First Amendment freedoms put in jeopardy by Section 318 are supremely precious. This Court has explained, "because First Amendment freedoms need 'breathing space' to survive, government may regulate in this area only with narrow specificity." *NAACP v. Button*, 371 U.S. 415, 433 (1963). While this Court has instructed that "[p]recision of regulation must be the touchstone" when regulating activities protected by the First Amendment, Section 318 apes that precision and instead broadly bans the exercise of pristine

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10. *See* Title 10 U.S.C. § 505 (2002) (authorizing enlistment of minors).

constitutional freedoms.

Ready and less burdensome alternatives exist to ensure that current election laws are not manipulated by means of the channeling of funds through minors. In fact, the Federal Election Commission never recommended such a ban to Congress, preferring instead to suggest less drastic means.[11]

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11. The FEC has proposed to Congress that it adopt legislation related to contributions by minors to federal candidates and committees of political parties. The FEC has submitted Annual Reports to Congress and to the President as required by law. Those Reports provide information about the regulatory and enforcement activities of the Commission, and they also communicate proposals for legislative action.

In its 1992 Annual Report, the FEC recommended that Congress establish a minimum, but unspecified, age for contributors. *See* 1992 Annual Report at 64. In support of that recommendation, the FEC stated: "The Commission has found that contributions are sometimes given by parents in their children's names. Congress should address this potential abuse by establishing a minimum age for contributors, or otherwise provide guidelines ensuring that parents are not making contributions in the name of another." *Id.*

In each of its Annual Reports for the years 1993-98, the FEC recommended that Congress establish a presumption that contributors below age 16 are not making contributions on their own behalf. *See, e.g.*, 1993 Annual Report at 50. The FEC explained, "The Commission has found that contributions are sometimes given by parents in their children's names. Congress should address this potential abuse by establishing a minimum age for contributors, or otherwise provide guidelines ensuring that parents are not making contributions in the name of another." *Id.*

In its 1999 and 2000 Annual Reports, the FEC recommended that

Going beyond the all-or-nothing approach of the ban, Congress could have established a family contribution cap or employed a rebuttable presumption regarding the voluntariness of minors' contributions.[12] In fact, Congress

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Congress establish a minimum age of 16 for making contributions. *See* 1999 Annual Report at 50; 2000 Annual Report at 43. Regarding this proposal, the FEC stated: "The Commission has found that contributions are sometimes given by parents in their children's names. Congress should address this potential abuse by establishing a minimum age of 16 for contributors, or otherwise provide guidelines ensuring that parents are not making contributions in the name of another." *Id.*

12. The States have undertaken such less burdensome regimens of regulation, by which minors are permitted to continue making donations while the putative harms of circumvention and corruption are avoided by less draconian means. At least fourteen States have enacted less cumbersome and prohibitive regimes for the regulation of political donations by minors to candidates for state election:

Alaska : A minor may not contribute money or anything of value given to the child by a parent for that purpose. *See* 2 Alaska Admin. Code 50.258 (2002).

Arizona: A contribution from an unemancipated minor is treated as a contribution from his parents. *See* A.R.S. § 16-905 (2001).

Arkansas: When a person provides his/her dependent child with funds to make a contribution to a candidate, the contribution shall be attributed to such person for purposes of applying the contribution limit. *See* A.C.A. § 7-6-205 (2002).

Connecticut: No individual who is less than 16 years of age shall make a contribution or contributions, in excess of thirty dollars. *See* Conn. Gen. Stat. § 9-333m (2001).

Florida: No unemancipated child under the age of 18 years may make a contribution to any candidate or political committee in excess of $100. *See* Fla. Stat. § 106.08 (2002).

Hawaii: A contribution by a dependent minor is reported in the name of the minor but counts against the contribution of the minor's parent or guardian. *See* HRS § 11-204 (2002).

Kansas: Contributions made by unemancipated children under 18 years of age are considered contributions made by the parent or parents of such children. *See* K.S.A. § 25-4153 (2001).

Kentucky: Minors' contributions may not exceed $100. *See* KRS § 121.150.

Massachusetts: Persons under age 18 may not contribute more than $25 per calendar year, in the aggregate. *See* Mass. Ann. Laws ch. 55, § 7 (2002).

Michigan: A contribution of expenditure by a dependent minor shall be reported in the name of the minor but shall be counted against the contribution limitations of the minor's parent or guardian. *See* MCLS § 169.253 (2002).

Oklahoma: For the purposes of limitations on contributions, those made by husband, wife and all unemancipated children under the age of 18 are aggregated to a single family unit. *See* 21 Okl. St. § 187.1 (2002).

South Carolina: Contributions by unemancipated children under 18 years of age are considered contributions by their parents. *See* S.C. Code Ann. § 8-13-1330 (2001).

Texas: A contribution by a child under the age of 18 of an individual is considered to be a contribution by the individual. *See* Tex. Elec. Code § 253.158 (2002).

West Virginia: Minors under the age of 18 may make a

could simply require the FEC and the Attorney General to enforce the current restrictions.

II. THE BAN ON CONTRIBUTIONS BY MINORS IS OVERBROAD.

Judge Henderson correctly concluded that Section 318 is unconstitutionally overbroad." Op. of Henderson, J., at 331-33; Supp. App. 465sa. Section 318 prohibits every contribution of money by a minor to a federal candidate or a committee of a political party. The prohibition applies to servicemen and women who are defending our Nation, 10 U.S.C. § 505 (2002), to emancipated minors, and to minors – such as these Appellees – who possess independence of judgment and separate financial means to make such donations. The ban is not limited to parents or guardians with a history of bad conduct; it assumes that no minor is to be trusted not to abuse his or her rights.

This is a case, not of mere "substantial overbreadth" but of *inherent* overbreadth: "there is no core of easily identifiable and constitutionally proscribable conduct that the statute prohibits." *Secretary of State v. J. H. Munson Co.*, 467 U.S. 847, 865-66 (1984). *See id.* at 864-65 (in case of

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contribution if (a) the decision to contribute is made knowingly and voluntarily by the minor child; (b) the funds, goods or services are owned and controlled exclusively by the minor child; (c) the contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or not in any other way controlled by another individual. *See* W. Va. Code § 3-8-12 (2002).

inherent overbreadth, the more demanding "substantial overbreadth" test does not apply). This ban "does not aim specifically at evils within the allowable area of State control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of [constitutional] freedom[s]." *Thornhill v. Alabama*, 310 U.S. 88, 97 (1940). Such an "overbroad" law "directly restricts protected expressive activity and does not employ means narrowly tailored to serve a compelling governmental interest." *Munson*, 467 U.S. at 965 n.13. The ban flies in the face of established doctrine:"Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *Riley v. National Fed'n of the Blind*, 487 U.S. 781, 801 (1988) (internal quotation marks and citation omitted).

III. SECTION 318 VIOLATES THE MINORS' RIGHTS TO EQUAL PROTECTION.

Because Section 318 is a complete prohibition, not merely a limitation on the amount of a permissible contribution, it is subject to strict scrutiny, *see Buckley*, 424 U.S. at 24-25. In addition to the associational freedom and free speech claims that they have presented, Section 318 also violates these Appellees' rights to equal protection guaranteed to them by the Fifth Amendment Due Process Clause. They have been selectively subjected to the burdensome provisions of the ban solely because of the age. Put another way, their exercise of fundamental First Amendment rights is differentially burdened, in an unjustifiable manner, because of their age. Consequently, for this separate reason, Section

318 is subject to strict scrutiny, which it cannot survive.[13]

CONCLUSION

For all the foregoing reasons, the judgment of the District Court below, holding that Section 318 of the Bipartisan Campaign Reform Act is unconstitutional, should be affirmed summarily by this Court.

Respectfully submitted,

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May 30, 2003.

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13. Because, in most respects, the analysis here would track the analysis applied in Argument I(B) and (C), it is unnecessary to duplicate those arguments here.

Supreme Court, U.S.
FILED
MAY 23 2003
OFFICE OF THE CLERK

No. 02-1675

IN THE SUPREME COURT OF THE UNITED STATES

NATIONAL RIFLE ASSOCIATION, ET AL., APPELLANTS

v.

FEDERAL ELECTION COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RESPONSE OF APPELLEES FEDERAL ELECTION COMMISSION, ET AL.

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QUESTION PRESENTED

In 2002, the President signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. BCRA is designed to address various abuses associated with the financing of federal election campaigns and thereby protect the integrity of the federal electoral process. The question presented by this appeal is as follows:

Whether BCRA's funding limitations and disclosure requirements pertaining to "electioneering communications" are constitutional.

IN THE SUPREME COURT OF THE UNITED STATES

No. 02-1675

NATIONAL RIFLE ASSOCIATION, ET AL., APPELLANTS

v.

FEDERAL ELECTION COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RESPONSE OF APPELLEES FEDERAL ELECTION COMMISSION, ET AL.[1]

OPINIONS BELOW

The opinions of the district court are not yet reported. See J.S. App. 4a.

JURISDICTION

The judgment of the district court was entered on May 2, 2003. Appellants' notice of appeal (J.S. App. 1a-3a) was filed on May 5, 2003. Appellants' jurisdictional statement was filed on May 6, 2003. The jurisdiction of this Court is invoked under the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, § 403(a)(3), 116 Stat. 114.

[1] This response is filed on behalf of the Federal Election Commission (FEC) and David M. Mason, Ellen L. Weintraub, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Michael E. Toner, in their capacities as Commissioners of the FEC; John Ashcroft, in his capacity as Attorney General of the United States; the United States Department of Justice; the Federal Communications Commission; and the United States of America. Those parties are appellants in Federal Election Commission v. Mitch McConnell, United States Senator, No. 02-1676.

STATEMENT

This case presents a facial challenge to the constitutionality of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. A three-judge panel of the District Court for the District of Columbia held that several provisions of BCRA violate the First Amendment to the Constitution, while sustaining other BCRA provisions against various constitutional challenges. Congress has vested this Court with direct appellate jurisdiction over the district court's decision. See BCRA § 403(a)(3), 116 Stat. 114.

Appellants challenge various rulings of the district court rejecting appellants' constitutional challenges in part. As of this date, three other jurisdictional statements arising out of the same district court judgment are pending before this Court. See Mitch McConnell, United States Senator v. Federal Election Commission, No. 02-1674; Federal Election Commission v. Mitch McConnell, United States Senator, No. 02-1676 (see note 1, supra); John McCain, United States Senator v. McConnell, United States Senator, No. 02-1702.

DISCUSSION

Under Section 403(a)(3) of BCRA, the final decision of the district court in this case is "reviewable only by appeal directly to the Supreme Court of the United States." 116 Stat. 114. Pursuant to Section 403(a)(4) of BCRA, this Court is directed "to

advance on the docket and to expedite to the greatest possible extent the disposition of the * * * appeal." 116 Stat. 114. In addition to filing our own jurisdictional statement (see note 1, supra) to appeal the district court's rulings declaring certain provisions of BCRA to be invalid, appellees will defend on appeal those provisions of the statute that were sustained against appellants' constitutional challenges. Appellees agree, however, that appellants' jurisdictional statement identifies substantial questions of federal law and that this Court should note probable jurisdiction over the appeal.[2]

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[2] Contemporaneously with this response, appellees are filing a motion for expedited briefing schedule applicable to this appeal and to the other pending appeals (see p. 2, supra) from the district court's judgment in this case.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted.

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MAY 2003

02-1674 (22)
02-1675 (28)
No. 02-1676 (29)

Supreme Court, U.S.
FILED
MAY 29 2003
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

FEDERAL ELECTION COMMISSION, *et al.*
Appellants

vs.

SENATOR MITCH MCCONNELL, *et al.*
Appellees.

On Appeal from the United States
District Court for the District of Columbia

Joint Motion to Affirm Summarily

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QUESTIONS PRESENTED

Prior to the effective date of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81, minors had the right to contribute to the committees of political parties and to candidates for federal office, subject to the same limitations that also applied to persons that had attained their majority. Section 318 of BCRA completely prohibits donations to committees and to candidates by minors. In the view of these Appellees, all of whom are minors, the question presented is:

> Whether the three judge district court erred in its judgment that the absolute ban on donations by minors was unconstitutional?

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In the Supreme Court of the United States

No. 02-1676

FEDERAL ELECTION COMMISSION, *et al Appellants*

vs.

SENATOR MITCH MCCONNELL, *et al., Appellees.*

On Appeal from the United States District Court for the District of Columbia

Joint Motion to Affirm Summarily

The minor Appellees, by their next friends, move this Court pursuant to Supreme Court Rule 18.6 for an Order summarily affirming the judgment of the three judge court of the United States District Court for the District of Columbia, which held that Section 318 of BCRA is unconstitutional.

As set forth within, the questions regarding the constitutionality of Section 318 of BCRA are so well-settled in the precedents of this Court that plenary review of the judgment striking Section 318 as unconstitutional is unwarranted.

STATEMENT OF THE CASE

1. Section 318 of the Act–

The Federal Election Campaign Act ("FECA") directly prohibits any person from making political contributions in the name of another. Title 2 U.S.C. § 441f (2002). That prohibition encompasses contributions made by a parent in

the name of their minor child. FECA also directly prohibits any person from exceeding the maximum permitted political contribution. 2 U.S.C. § 441a. That limitation prevents the parent or guardian of a minor child from exceeding limitations on contributions by the ruse of donating in the name of their minor child. Thus, prior to the enactment of BCRA, federal law already prohibited circumventing campaign limits by making gifts in the names of children.

There was no evidence to suggest the need for such a flat ban. In fulfillment of its statutory enforcement responsibilities, the Federal Election Commission ("FEC") has investigated only the barest handful of instances of parental donations in the names of minor children.[1] Moreover, Congress made no factual findings in BCRA regarding problems related to donations by minors to the committees of political parties or to candidates in BCRA. Section 318 was added to the Act while the proposal was pending in the House. No explanation for the provision was offered during debate there.[2] The only explanation offered for the ban came during the Senate debate on the Act.[3] There, Senator John McCain stated that the ban was needed

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1. The Federal Election Commission admitted in discovery below that one percent or fewer of its investigatory "Matters Under Review" "involved covered political contributions by minors or by parents made in the name of the minor children."

2. The Appellants acknowledged below the absence of any explanation related to this provision in the House debates on BCRA.

3. *See* 148 Cong. Rec. S2145-46 (daily ed. March 20, 2002) (statement of Sen. McCain).

to address the problem of parental circumvention of donation limitations by giving contributions in the names of their minor children.[4]

Nonetheless, when it enacted BCRA, Congress included Section 318, which amends FECA by adding to it a new section 324, prohibiting anyone seventeen years of age or younger from making any contribution to a candidate, or a contribution or donation to a national or state political party committee:

> An individual who is 17 years old or younger shall not make a contribution to a candidate or a contribution to a committee of a political party.

Title III, § 318, H.R. 2356, 107th Cong. (2002) (enacted); FEC Jurisdictional Statement at 71a. Judge Henderson, in her separate opinion below, described Section 318 as "fall[ing] into the category of 'who knows where it came from.'" *See* Op. of Henderson, J., at 326; Supplemental Appendix to Jurisdictional Statements at ___ ("Supp. App.").

2. The Decision Below–

The three-judge panel unanimously agreed that Section 318 violated the Constitution:

> Section 318 prohibits donations by minors to federal candidates, or to a committee of a political party. All three judges agree that this section is unconstitutional.

---

4. *See* 148 Cong. Rec. S2145-48 (daily ed. March 20, 2002) (statement of Sen. McCain).

> Each judge writes a separate concurrence setting forth his/her reasoning as to this section.

Per Curiam Op. at 11; Supp. App. ___. As indicated, all three judges wrote separately to explain their reasoning for that conclusion.

Judge Henderson concluded that whether analyzed under strict scrutiny or under "*Buckley* scrutiny," Section 318 was unconstitutional. In Judge Henderson's view, the Appellants' arguments for the constitutionality of Section 318 failed for two principal reasons:

> First, section 318 does not serve any governmental interest, much less a "sufficiently important" or "compelling" one.
>
> • • • •
>
> Second, even if section 318 served to prevent actual or apparent corruption of federal candidates in a material way not served by existing law, the provision could not be sustained because—far from being "closely drawn" or "narrowly tailored"—it is grossly overbroad.

Op. of Henderson, J. at 328, 331; Supp. App. ___-___. In addition, Judge Henderson found that the evidence proffered to justify Section 318 as a tool to prevent corruption "is remarkably thin." Op. of Henderson, J. at 329, Supp. App. ___.

Judge Kollar-Kotelly, like Judge Henderson, found it unnecessary to decide between strict scrutiny or "*Buckley* scrutiny." In Judge Kollar-Kotelly's view, "Defendants have

failed to present sufficient evidence to establish that parents' use of minors to circumvent campaign finance laws serves an important government interest." Op. of Kollar-Kotelly at 611, Supp. App. ___. *See also id.*; Supp. App. ___ ("the evidence presented is insufficient to support government action that abridges constitutional freedoms").

Judge Leon, while concurring in the conclusion of Judges Henderson and Kollar-Kotelly that Section 318 was unconstitutional, wrote "only to explain why [he] believe[d] th[e] Court should evaluate this provision under the strict-scrutiny standard of review." Op. of Leon, J., at 106; Supp. App. ___.

3. Facts Relevant to the Challenge to Section 318

a. *Echols v. FEC*

Appellees Emily Echols, Daniel Solid, Hannah and Isaac McDow, Jessica Mitchell, and Zachary White are citizens of the United States. Echols, Solid and White reside in Georgia, the McDows reside in Alabama, and Mitchell resides in Florida. Each of them is aged seventeen years or younger. These Appellees are seriously interested in government, politics, and campaigning. Their interest is demonstrable, having, amongst them, participated in campaigns as volunteers, assembled signs, distributed literature, walked precincts, even traveling great distances to campaign door-to-door for candidates they support. In such ways and others, they have shown their commitment to using their rights to freedom of association and expression to effect political changes in accord with their beliefs and opinions.

These minors possess monies that they have earned – either by working outside their homes or by performing chores around their homes for pay – or that they received as gifts. No portion of these monies consists of funds given to them for the purpose of making political contributions. The parents of the Echols plaintiffs are aware of the federal campaign laws and the restrictions they impose; and they have obeyed those laws.

For these young citizens, contributing money to candidates and to the committees of political parties are forms of expression of support for those candidates and committees. Moreover, by making such contributions of money, they have already associated with those selected candidates and committees of political parties. The minors Appellees plan to, and intend to, exercise their rights of political association and expression by making candidate and committee contributions, during their minority, into the future. But for the enactment of Section 318 and its ban on such political contributions by them, they would be free to do so.

b. *McConnell v. FEC*

Appellee Barret Austin O'Brock is a minor living in Louisiana.[5] He declared his general intention to contribute

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5. In the court below, Trevor M. Southerland, then a minor, also challenged Section 318. On May 28, 2003, Mr. Southerland attained his majority. Consequently Section 318 no longer deprives him of the rights to freedom of speech and association that he complained of, and vindicated below. Although he has reached his majority, the claim in the *McConnell* litigation was brought by him and by Barret

to federal candidates in future elections, including in the 2002 and 2004 election. Specifically, he stated his intention to contribute at least $20 of his own money (not received from any other person for purposes of the contribution) to John Milkovich, a candidate for U.S. Representative for the Fourth Congressional District of Louisiana, prior to the November 2002 general election. Barret knows candidate Milkovich personally because the candidate was Barret's Sunday School teacher for two years.

SUMMARY OF ARGUMENT

The day is long past when America's teenagers and children may be consigned to constitutional steerage, there to "enjoy" all the benefits of third class citizenship. As early as *West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624 (1943), it has been without question that American children are "whole persons" in the constitutional sense. Concomitantly, they possess the same constitutional rights and liberties as adults, even if, in certain circumstances, such as the special case of public schools, the contours of those rights vary slightly from the rights of their adult counterparts. *See Tinker v. Des Moines Ind. Comm. Sch. Dist.*, 393 U.S. 503, 511 (1969).

O'Brock, who is still in his minority, and by the plaintiff minors in the *Echols* litigation, all of whom are also still in their minority. Consequently, the apparent mootness of Mr. Southerland's claim does not render moot the judgment below that Section 318 is unconstitutional; nor does his majority warrant an Order vacating the injunction against enforcement of Section 318 as to those Appellees still in their minority.

Nonetheless, in a stunning strike against those rights, Congress enacted the complete ban embodied in Section 318. All three of the judges below agreed that Section 318 was unconstitutional. A majority – Judges Henderson and Kollar-Kotelly – agreed that it was unnecessary to decide whether a more or less stringent standard of review applied because of the flagrant unconstitutionality of the flat ban. Judge Leon did not disagree with that view, but instead focused on the reasons for applying strict scrutiny to Section 318.

The flat ban on donations by minors to political party committees and to candidates flouts several constitutional norms relevant to laws affecting associational freedoms and expression. In accord with this Court's decision in *Buckley v. Valeo*, 424 U.S. 1, 24-25 (1976), the ban on all political contributions by minors is subject to the closest scrutiny.[6] But even if the ban is subjected to the lesser scrutiny applied to donation limitations in *Buckley*, the court below correctly concluded that it could not withstand such scrutiny.

The ban is severely flawed. It is not drawn in service of a sufficiently important government interest. Even assuming a sufficiently compelling justification for Congress to act, the ban on political contributions by minors is not drawn

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6. As explained in *Buckley*, 424 U.S. at 16-18, Section 318 must be subjected to something more than the scrutiny embodied in *United States v. O'Brien*, or the time, place and manner analysis employed in the Public Forum cases, *e.g.*, *United States v. Grace*, 461 U.S. 171 (1983).

narrowly in service of the government interests at stake.

ARGUMENT

I. SECTION 318 VIOLATES MINORS' CONSTITUTIONAL RIGHTS

As a matter of first principles, a complete ban on political contributions strikes directly at the heart of the First Amendment. As this Court explained, in addressing statutory ceilings on the amount of personal contributions: "The Act's contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities." *Buckley v. Valeo*, 424 U.S. 1, 14 (1976). Nothing in *Buckley* or its progeny suggests that the injury of such a flat prohibition on even token contributions is felt any less keenly by, or inflicts less grievously a wound upon the rights of, citizens of the United States who are in their minority.

A. MINORS POSSESS FIRST AMENDMENT RIGHTS OF FREEDOM OF ASSOCIATION AND SPEECH.[7]

If, as this Court has said, student do not "shed their Constitutional rights to freedom of speech or expression at the schoolhouse gate," *Tinker v. Des Moines Ind. Comm. Sch. Dist.*, 393 U.S. 503, 511 (1969), then there can be no question that they possess those rights before they pass

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7. This case does not address the lawful authority of parent or guardians over minors in their care and under their control, but rather, it addresses the imposition by Congress of a complete ban on the exercise by minors of rights of speech and association.

through those gates. Here, as with analogous contributions by their adult counterparts, the political contributions of minors are, at a minimum, an exercise of the constitutional right to political association. *Buckley*, 424 U.S. at 15 ("The First Amendment protects political association as well as political expression;" "[T]he First and Fourteenth Amendments guarantee freedom to associate with others for the common advancement of political beliefs and ideas") (citations and internal quotation marks omitted). For these minors, contributions to candidates and committees of political parties serve to express support for and association with selected candidates and committees.[8]

In *Bellotti v. Baird*, 443 U.S. 622, 634 (1979), the Court noted that government intrusion into a minor's fundamental

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8. Of course, special circumstances exist in which the exact dimensions of the constitutional rights enjoyed by minors vary from those of their adult counterparts. *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 214 n.11 (1975). Most of the cases discussing the questions related to minors' First Amendment rights, for example, arise in the special environment of the school. But even there, this Court has stated that "[s]tudents in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect[.]" *Tinker*, 393 U.S. at 511. Other special circumstances include, for example, restricting minors' access to obscene materials, *see, e.g., Ginsberg v. New York*, 390 U.S. 629, 637-38 (1968); restricting minors' access to abortion, *see, e.g., Bellotti v. Baird*, 443 U.S. 622, 634 (1979). *Cf. Dallas v. Stanglin*, 490 U.S. 19, 24-25 (1989) (upholding City's adoption of special use classifications for dance halls to prevent juvenile crime and victimization) (classification subject to rational basis scrutiny because no fundamental right impinged or suspect category created).

rights may be justified based on "the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing." None of those special circumstances, however, is implicated by this statutory restriction on core First Amendment rights.

The Government makes the novel argument, see Jurisdictional Statement at 28, FEC v. McConnell (docketed May 15, 2003), that "any First Amendment interests that minors may have in participating in the financing of federal elections is substantially limited by the fact that minors have no constitutional right to vote in such elections." Unsurprisingly, the Government does not rely on any decision of this Court (or, for that matter, of any other court) for this proposition. It is insupportable and without merit. While it is true that minors do not possess the right to vote, it is just as true that they pay taxes and possess the right to freedom of speech and of association. No limiting principle is enunciated in the Government's standard to prevent the suppression of rights of expression in a variety of circumstances.

In the absence of such a limiting principle, the most unacceptable and unconscionable results follow in any case where a government program or action affects selected groups or individuals, but leaves unaffected others who may, nonetheless, hold views or opinions that they would express about the Government's action. Women, for example, are not required to register for selective service. In this sense, women are not affected by the registration requirement.

According to the Government's approach, the federal government could suppress the speech and associational rights of a group of mothers of draft-eligible young men. Other examples clamor for attention. Men, using the Government's rationale, could be silenced in either their support for or opposition to abortion rights, because, after all, men cannot become pregnant. All persons in the United States who are not the descendants of African Americans once held in involuntary servitude could be silenced on the question of whether a government program of reparations should be undertaken.

The Government's rationale fails to account for the terms of the First Amendment, which do not admit of an entire exception from protection for minors. Nor does the Government seek to square its approach with the decisions of this Court that have recognized that minors are persons in the constitutional sense and possess rights under the First Amendment. The Government casually ignores the certainty that even if minors are not protected from discrimination on the basis of age in voting, every federal election in this Nation is a matter of significance to them and to their future. The examples cited above, and the multitude more that can readily be drawn from a topical index of cases decided by this Court or the Popular Names Table of United States Statutes, adequately dispose of the simplistic "they can't vote so they don't count" approach taken by the Government.

B. There Is No Sufficiently Compelling Governmental Interest to Justify the Denial of Minors' Constitutional Rights of Speech and Association.

To discern whether Congress has gone too far in banning political contributions by minors, it is essential to ask what Congress sought to accomplish. Apparently, Congress sought to address parental circumvention of donation limitations and channeling of gifts. In the court below, the Appellants offered various justifications in defense of Section 318, including avoiding corruption and the appearance of it, assuring the legitimacy of the electoral system, preventing circumvention of campaign contribution limits, facilitating deterrence and detection of violations of federal campaign limitations, and restoring public faith in the system.

The concern about circumvention of donation limitations by wealthy parents using the names of their minor children – to which Senator McCain adverted on the Senate floor[9] – is unsupported by any substantial evidence. Both Judge Henderson and Judge Kollar-Kotelly took note of the "thinness" of the evidence supporting the need for Section 318. Judge Henderson found "the government's evidence of corruption-by-conduit . . . remarkably thin . . . ." Op. of Henderson, J., at 329; Supp. App. ___. Judge Kollar-Kotelly noted, the Government "failed to present sufficient evidence to establish that parents' use of minors to circumvent campaign finance laws serves an important governmental

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9. *See* nn. 3-4 , *supra* and accompanying text.

interest . . . ." Op. of Kollar-Kotelly, J., at 611; Supp. App. ___. In light of that failure, Judge Kollar-Kotelly concluded, "the minimal evidence presented does not establish that circumvention of campaign finance laws by parents of minors supports the required governmental interest." Op. of Kollar-Kotelly, J., at 612; Supp. App. ___.

Even assuming that a statutory regimen may have been necessary to remediate the unsubstantiated problems of parental circumvention and excess giving, Section 318 is unjustifiable. A statutory ban on political contributions by minors burdens substantially more political association and speech than necessary precisely because its proscriptions apply to individuals who never have engaged in prior unlawful behavior.

The minors' donations to committees and candidates embody classic exercises of the right to freedom of political association and freedom of speech. No *valid* government interest supports this ban. Such a complete ban was not at issue in *Buckley*. Instead, because FECA permitted a contribution in some amount, this Court concluded that the ceiling on such contributions survived scrutiny. Here, Congress utterly prohibits even a token donation. That complete prohibition, to the contrary of the FECA *limitations* at stake in *Buckley*, encompasses so much speech and association unrelated to any regulable evil that it is "substantially broader than necessary to achieve the interests justifying it." *Ward v. Rock Against Racism*, 491 U.S. 781, 799 n.7 (1989).

Nor can concerns about abuses by a few parents, who

might circumvent restrictions on their own donations by using their minor children as surrogates, justify a flat ban on contributions by minors. Such circumvention is already illegal under FECA provisions predating BCRA and not challenged in this litigation. *See* Title 2 U.S.C. §§ 441a and 441f (2002). Moreover, the gift of money by a minor need not come *from* parental sources or *at* parental direction. For example, Jessica Mitchell, one of the minor Appellees in this case, donated money to a candidate for the United States House of Representatives that she had earned from a small pet care business that she and a friend started in their neighborhood. Each of the other minors, likewise, has monies that were not received as part of a scheme or plan of their parents to circumvent FECA's limitations on contribution amounts. Yet donations by the minor Appellees are barred by Section 318.

Oddly absent from the justifications proffered by the Appellants below is any assertion that money from minors is, in its essence, corrupting or evil. In fact, the proffered justifications exclusively focus on the alleged abuses of parents, which abuses already are directly prohibited by FECA. Moreover, the Government's interest in preventing corruption or the appearance of corruption is no greater (and arguably much less) with respect to minors than with respect to adults. If any contribution is corrupting, then all contributions should be banned: contributions of all sizes, contributions from all sources.

Plainly, the government interest in preventing parents from circumventing contribution limits by channeling additional contributions through their children is not

sufficiently compelling to justify Section 318.

C. Section 318 Is Not Narrowly Tailored to the Asserted Governmental Interest.

Two aspects on the statute are significant to an appropriate constitutional analysis of the fit between the asserted government purposes of the ban and the means chosen to serve them. First, the ban applies to individual minors whether or not their exercise of associational expression and free speech have threatened the interests identified by the Appellants. These minors are barred from symbolically expressing their association with candidates and committees by even token donations despite the utter lack of evidence that these minors have subverted campaign finance limitations, or that their parents or guardian have used them for that purpose. The ban applies to all gifts by minors even though there is no reason to conclude that such gifts, taken individually or in the aggregate, either by their nature or practice, works injury to the identified government interests.

Second, unlike the direct bans on giving contributions in the name of another, 2 U.S.C. § 441f (2002), and on exceeding limitations on contribution amounts, 2 U.S.C. § 441a(a)(1)(A), the ban on contributions by minors works a *prophylactic* suppression of constitutionally protected rights of minors. As this Court has repeatedly admonished, however, "broad prophylactic rules in the area of free expression are suspect." *NAACP v. Button*, 371 U.S. 415, 458 (1963).

In *Buckley*, of course, this Court upheld personal

contributions *ceilings*, not a complete ban. A *ban* on such gifts could not, however, pass muster. In fact, one of the signal justifications offered in *Buckley* for a contribution ceiling was that a ceiling left donors free to make some donation:

> A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution . . . .

424 U.S. at 21. A *ban* that entirely prevents a minor from giving "to a candidate or campaign," does not "permit[] the symbolic expression of support evidenced by a contribution."

What is called for in this analysis is an examination of the fit between purpose and means. For example, in *Members of the City Council v. Taxpayers for Vincent*, 466 U.S. 789, 810 (1984), the Court upheld an ordinance that prohibited the posting of signs on public property, but only after concluding that the ordinance "responds precisely to the substantive problem [of visual blight] that concerns the City." That cannot be said of the contribution ban; it closely resembles the anti-littering law struck down in *Schneider v. State*, 308 U.S. 147 (1939). There, as here, the state "could have addressed the substantive evil without prohibiting expressive activity," or adopting a "prophylactic rule." *Taxpayers for Vincent*, 466 U.S. at 810. Similarly, *Ward v. Rock Against Racism*, 491 U.S. 781 (1989), and *Clark v. Community for Creative Nonviolence*, 468 U.S. 288 (1984), also assume a fit

between means and ends that is lacking here. Thus, in *Ward*, an ordinance requiring that city employees operate sound amplification equipment was upheld because it directly advanced the city's interest in controlling noise. 491 U.S. at 800. Likewise, in *Clark*, a regulation barring protesters from sleeping in a park was upheld because it "narrowly focused on the Government's substantial interest in maintaining the parks in the heart of our Capitol in an attractive and intact condition." 468 U.S. at 296.

These cases all show that Congress must craft its statutes narrowly when regulating constitutional rights, and must limit its interests to those unrelated to the suppression of expression. *Buckley*, 424 U.S. at 17-18. Below, the Appellants identified the interests supposedly served by the statute. Unfortunately, the ban is not closely drawn to promote those interests. Instead, it focuses directly on expressive activities. It thus burdens substantially more speech than necessary to accomplish the state's goal and cannot be sustained.

The interests identified by the Appellants go to abuses by persons other than minors. But the ban targets constitutional exercises by minors. Consequently the ban does not target the "evil" – namely, circumvention or corruption – that motivated Congress to enact it. *Cf. Frisby v. Schultz*, 487 U.S. 474, 485 (1988) ("complete ban can be narrowly tailored . . . only if each activity within the proscription's scope is an appropriately targeted evil"). Of course, Congress can address circumvention and corruption problems directly; indeed, it already has done so with its enactment of 2 U.S.C. §§ 441a and 441f (2002).

Neither the minor Appellees nor their parents have challenged those existing provisions of FECA. Those unchallenged and existing restrictions directly serve the interests that are, at best, only obliquely served by Section 318's ban on political contributions by minors. Instead, the minors' ban goes further and in a different direction entirely. Section 318 prohibits minors' political contributions, even when such contributions are not made in circumvention of FECA's contribution limits. It prohibits contributions of emancipated minors. It prohibits contributions by orphaned minors. And it prohibits contributions of those minors who, with consent of their parents, have enlisted in the United States Armed Forces.[10]

These minors "are not quibbling over fine-tuning of prophylactic limitations, but are concerned about wholesale restriction of clearly protected conduct." *FEC v. National Conservative PAC*, 470 U.S. 480, 501 (1985). The First Amendment freedoms put in jeopardy by Section 318 are supremely precious. This Court has explained, "because First Amendment freedoms need 'breathing space' to survive, government may regulate in this area only with narrow specificity." *NAACP v. Button*, 371 U.S. 415, 433 (1963). While this Court has instructed that "[p]recision of regulation must be the touchstone" when regulating activities protected by the First Amendment, Section 318 apes that precision and instead broadly bans the exercise of pristine constitutional freedoms.

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10. *See* Title 10 U.S.C. § 505 (2002) (authorizing enlistment of minors).

Ready and less burdensome alternatives exist to ensure that current election laws are not manipulated by means of the channeling of funds through minors. In fact, the Federal Election Commission never recommended such a ban to Congress, preferring instead to suggest less drastic means.[11]

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11. The FEC has proposed to Congress that it adopt legislation related to contributions by minors to federal candidates and committees of political parties. The FEC has submitted Annual Reports to Congress and to the President as required by law. Those Reports provide information about the regulatory and enforcement activities of the Commission, and they also communicate proposals for legislative action.

In its 1992 Annual Report, the FEC recommended that Congress establish a minimum, but unspecified, age for contributors. *See* 1992 Annual Report at 64. In support of that recommendation, the FEC stated: "The Commission has found that contributions are sometimes given by parents in their children's names. Congress should address this potential abuse by establishing a minimum age for contributors, or otherwise provide guidelines ensuring that parents are not making contributions in the name of another." *Id.*

In each of its Annual Reports for the years 1993-98, the FEC recommended that Congress establish a presumption that contributors below age 16 are not making contributions on their own behalf. *See, e.g.*, 1993 Annual Report at 50. The FEC explained, "The Commission has found that contributions are sometimes given by parents in their children's names. Congress should address this potential abuse by establishing a minimum age for contributors, or otherwise provide guidelines ensuring that parents are not making contributions in the name of another." *Id.*

In its 1999 and 2000 Annual Reports, the FEC recommended that Congress establish a minimum age of 16 for making contributions.

Going beyond the all-or-nothing approach of the ban, Congress could have established a family contribution cap or employed a rebuttable presumption regarding the voluntariness of minors' contributions.[12] In fact, Congress

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See 1999 Annual Report at 50; 2000 Annual Report at 43. Regarding this proposal, the FEC stated: "The Commission has found that contributions are sometimes given by parents in their children's names. Congress should address this potential abuse by establishing a minimum age of 16 for contributors, or otherwise provide guidelines ensuring that parents are not making contributions in the name of another." *Id.*

12.The States have undertaken such less burdensome regimens of regulation, by which minors are permitted to continue making donations while the putative harms of circumvention and corruption are avoided by less draconian means. At least fourteen States have enacted less cumbersome and prohibitive regimes for the regulation of political donations by minors to candidates for state election:

Alaska : A minor may not contribute money or anything of value given to the child by a parent for that purpose. *See* 2 Alaska Admin. Code 50.258 (2002).

Arizona: A contribution from an unemancipated minor is treated as a contribution from his parents. *See* A.R.S. § 16-905 (2001).

Arkansas: When a person provides his/her dependent child with funds to make a contribution to a candidate, the contribution shall be attributed to such person for purposes of applying the contribution limit. *See* A.C.A. § 7-6-205 (2002).

Connecticut: No individual who is less than 16 years of age shall make a contribution or contributions, in excess of thirty dollars. *See* Conn. Gen. Stat. § 9-333m (2001).

Florida: No unemancipated child under the age of 18 years may

make a contribution to any candidate or political committee in excess of $100. *See* Fla. Stat. § 106.08 (2002).

Hawaii: A contribution by a dependent minor is reported in the name of the minor but counts against the contribution of the minor's parent or guardian. *See* HRS § 11-204 (2002).

Kansas: Contributions made by unemancipated children under 18 years of age are considered contributions made by the parent or parents of such children. *See* K.S.A. § 25-4153 (2001).

Kentucky: Minors' contributions may not exceed $100. *See* KRS § 121.150.

Massachusetts: Persons under age 18 may not contribute more than $25 per calendar year, in the aggregate. *See* Mass. Ann. Laws ch. 55, § 7 (2002).

Michigan: A contribution of expenditure by a dependent minor shall be reported in the name of the minor but shall be counted against the contribution limitations of the minor's parent or guardian. *See* MCLS § 169.253 (2002).

Oklahoma: For the purposes of limitations on contributions, those made by husband, wife and all unemancipated children under the age of 18 are aggregated to a single family unit. *See* 21 Okl. St. § 187.1 (2002).

South Carolina: Contributions by unemancipated children under 18 years of age are considered contributions by their parents. *See* S.C. Code Ann. § 8-13-1330 (2001).

Texas: A contribution by a child under the age of 18 of an individual is considered to be a contribution by the individual. *See* Tex. Elec. Code § 253.158 (2002).

West Virginia: Minors under the age of 18 may make a contribution if (a) the decision to contribute is made knowingly and

could simply require the FEC and the Attorney General to enforce the current restrictions.

II. THE BAN ON CONTRIBUTIONS BY MINORS IS OVERBROAD.

Judge Henderson correctly concluded that Section 318 is unconstitutionally overbroad." Op. of Henderson, J., at 331-33; Supp. App. ___. Section 318 prohibits every contribution of money by a minor to a federal candidate or a committee of a political party. The prohibition applies to servicemen and women who are defending our Nation, 10 U.S.C. § 505 (2002), to emancipated minors, and to minors – such as these Appellees – who possess independence of judgment and separate financial means to make such donations. The ban is not limited to parents or guardians with a history of bad conduct; it assumes that no minor is to be trusted not to abuse his or her rights.

This is a case, not of mere "substantial overbreadth" but of *inherent* overbreadth: "there is no core of easily identifiable and constitutionally proscribable conduct that the statute prohibits." *Secretary of State v. J. H. Munson Co.*, 467 U.S. 847, 865-66 (1984). *See id.* at 864-65 (in case of *inherent* overbreadth, the more demanding "substantial

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voluntarily by the minor child; (b) the funds, goods or services are owned and controlled exclusively by the minor child; (c) the contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or not in any other way controlled by another individual. *See* W. Va. Code § 3-8-12 (2002).

overbreadth" test does not apply). This ban "does not aim specifically at evils within the allowable area of State control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of [constitutional] freedom[s]." *Thornhill v. Alabama*, 310 U.S. 88, 97 (1940). Such an "overbroad" law "directly restricts protected expressive activity and does not employ means narrowly tailored to serve a compelling governmental interest." *Munson*, 467 U.S. at 965 n.13. The ban flies in the face of established doctrine:"Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *Riley v. National Fed'n of the Blind*, 487 U.S. 781, 801 (1988) (internal quotation marks and citation omitted).

III. SECTION 318 VIOLATES THE MINORS' RIGHTS TO EQUAL PROTECTION.

Because Section 318 is a complete prohibition, not merely a limitation on the amount of a permissible contribution, it is subject to strict scrutiny, *see Buckley*, 424 U.S. at 24-25. In addition to the associational freedom and free speech claims that they have presented, Section 318 also violates these Appellees' rights to equal protection guaranteed to them by the Fifth Amendment Due Process Clause. They have been selectively subjected to the burdensome provisions of the ban solely because of the age. Put another way, their exercise of fundamental First Amendment rights is differentially burdened, in an unjustifiable manner, because of their age. Consequently, for this separate reason, Section

318 is subject to strict scrutiny, which it cannot survive.[13]

CONCLUSION

For all the foregoing reasons, the judgment of the District Court below, holding that Section 318 of the Bipartisan Campaign Reform Act is unconstitutional, should be affirmed summarily by this Court.

Respectfully submitted,

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May 30, 2003.

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13. Because, in most respects, the analysis here would track the analysis applied in Argument I(B) and (C), it is unnecessary to duplicate those arguments here.

Supreme Court, U.S.
FILED
JUN 2 - 2003
OFFICE OF THE CLERK

(30)

No. 02-1676

IN THE

Supreme Court of the United States

FEDERAL ELECTION COMMISSION, *et al.*,

Appellants,

—v.—

SENATOR MITCH MCCONNELL, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NATIONAL ASSOCIATION OF BROADCASTERS' MOTION TO AFFIRM DISTRICT COURT'S JUDGMENT AS TO SECTION 504 OF BCRA

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17 pp

QUESTION PRESENTED

Whether this Court should summarily affirm so much of the district court's judgment as unanimously struck down section 504 of the Bipartisan Campaign Reform Act as violative of the First Amendment.

STATEMENT PURSUANT TO RULE 29.6

Appellee National Association of Broadcasters has no parent corporation and has issued no stock to the public.

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Appellee, the National Association of Broadcasters, hereby moves the Court for an Order summarily affirming so much of the district court's judgment as struck down Section 504 of the Bipartisan Campaign Reform Act, Pub. L. No. 107-155, 116 Stat. 81 ("BCRA") as violative of the First Amendment. Although the Executive Branch Appellants,[1] have broadly urged the Court to review *every* provision of BCRA that was invalidated by the district court, they have offered no credible argument as to why plenary review of the district court's unanimous decision striking down Section 504 is warranted. For the reasons set forth below, this Court should summarily affirm the district court's unanimous decision striking down Section 504 of BCRA.

STATEMENT OF THE CASE

The National Association of Broadcasters ("NAB") is a non-profit, incorporated trade association of radio and television stations and broadcasting networks. 10 PCS/JG002.[2] NAB serves and represents the American broadcasting industry and has approximately 7,300 members throughout the country. *Id.* All of NAB's voting members are broadcast licensees within the meaning of the Communications Act of 1934. *Id.* NAB members regularly broadcast a substantial number of advertise-

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[1] The Executive Branch Appellants are the Federal Election Commission and David W. Mason, Ellen L. Weintraub, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Michael E. Toner, in their capacities as Commissioners of the FEC; John D. Ashcroft, in his capacity as Attorney General of the United States; the United States Department of Justice; the Federal Communications Commission; and the United States of America.

[2] References to "PCS" are to Plaintiffs' Consolidated Evidentiary Submission, filed with the district court on November 6, 2002.

ments taking positions on public issues, including ones on political matters of national interest and legislative issues of public importance. 10 PCS/JG003. Because NAB members are directly and adversely impacted by several provisions of BCRA they believe to be unconstitutional, shortly after the statute was enacted NAB instituted an action before the district court challenging those provisions, including Section 504.[3]

Section 504 of BCRA (amending § 315 of the Communications Act) compels all broadcasters to collect and publicly disclose records of any "request to purchase broadcast time" that "is made by or on behalf of a legally qualified candidate for public office" or that relates "to any political matter of national importance," including but not limited to communications relating to any "election to Federal office" or any "national legislative issue of public importance." Such records must include the acceptance or rejection of requests for advertisements; the name of the person making the requests and other contact information; a list of the chief executive officers or members of the executive committee or board of directors of the entity making the request; the date and time on which the communication is aired; the rate charged; the class of time purchased; and the issue to which the communication "refers." Section 504 thus requires broadcasters to obtain and disclose enormous detail about private citizens and groups who pay for political advertisements. Indeed, the statute goes so far

[3] On May 2, 2003 NAB filed its Jurisdictional Statement with the Court together with other parties in these related appeals (*see* Jurisdictional Statement in *McConnell* v. *Federal Election Commission*, No. 02-1674), seeking review of the district court's decision with respect to certain other provisions of BCRA. NAB believes that the questions presented there and the questions presented by the Executive Branch Appellants in this appeal (other than the constitutionality of section 504) merit plenary review by this Court.

as to require such disclosures where those citizens and groups merely *request* airtime, even if the airtime is never ultimately purchased.

NAB urged the district court to strike down Section 504 on the ground that the burdensome requirements imposed by the statute could not be sustained consistent with the First Amendment and served no legitimate governmental interest. NAB also argued that the statutory phrase "political matter of national importance" is unconstitutionally vague. In their effort to defend the statute below, the Executive Branch Appellants were left to urge that the record-keeping and disclosure provisions provided "important information" to the public about political campaigns and about the identity of groups seeking to air political advertisements. The government could identify no pressing problem—or indeed *any* problem at all—that could be said to justify the substantial intrusions imposed by Section 504.

Although the district court's four lengthy opinions are deeply fractured as to the constitutionality of many of BCRA's other provisions, the court's decision to strike down Section 504 was clear, unanimous and unequivocal. Section 504 could not stand, in the view of all three of the members of the lower court panel, because "the government lacks a constitutionally acceptable justification" to support its requirements. *See* Memorandum Opinion of Judge Leon at 114; Memorandum Opinion of Judge Kollar-Kotelly at 614 (agreeing with Judge Leon); *see also* Memorandum Opinion of Judge Henderson at 236-37. In fact, the district court found that the defendants "provided *no evidence* that Section 504 serves *any* of the government interests" that have been deemed sufficient to justify compelled disclosure of communications about federal candidates. *See* Memorandum Opinion of Judge Leon at 112 (emphasis added); Mem-

orandum Opinion of Judge Kollar-Kotelly at 614 (agreeing with Judge Leon); *see also* Memorandum Opinion of Judge Henderson at 236-37 (Section 504 does not "serve *any* of the three 'subordinating interests' mentioned in *Buckley*") (emphasis added). The court also concluded that Section 504's disclosure requirements for noncandidate-focused communications "are *even more* difficult to justify" and that "the defendants [ ] provided *no* evidence" that special interest groups posed a threat to justify the requirements of Section 504. *See* Memorandum Opinion of Judge Leon at 113-14 (emphasis added); Memorandum Opinion of Judge Kollar-Kotelly at 614 (agreeing with Judge Leon).[4]

In their Jurisdictional Statement, the Executive Branch Appellants have urged this Court to undertake plenary review of the district court's ruling as to Section 504. *See* Jurisdictional Statement at i. The Intervenor Appellants have not joined in that request. *See* Intervenor-Appellants' Jurisdictional Statement in *McCain v. McConnell* (No. 02-1702) at i.

ARGUMENT

There can be no serious dispute that the intrusive requirements imposed by Section 504 require the collection and disclosure of sweeping information about

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[4] Even before reaching the issue of whether the disclosure requirements of Section 504 could withstand "exacting scrutiny," Judge Henderson held that the statute was invalid because it failed the "express advocacy test" set forth in *Buckley* v. *Valeo*, 424 U.S. 1, 44 (1976). *See* Memorandum Opinion of Judge Henderson at 235 ("Many, if not most, communications 'relating to any political matter of national importance' do not contain words expressly advocating the election or defeat of a candidate. . . . Under *Buckley* these provisions are unconstitutionally overbroad unless they can reasonably be construed to apply only to express advocacy.")

those who choose to engage in core political speech, speech long-entitled to the fullest protections of the First Amendment. There can also be no serious dispute that the statute requires broadcasters nationwide to make the most sensitive of decisions about whether speech relates "to any political matter of national importance" or any "national legislative issue of public importance" and to risk severe sanctions if they are wrong in those determinations. These constitutionally suspect burdens cannot be imposed by the government in the absence of a substantial governmental interest. Yet, as the district court unanimously held, the recordkeeping and disclosure requirements of Section 504 fail to serve *any* legitimate governmental objective and, as such, violate the First Amendment.

During the course of this litigation, the Executive Branch Appellants have made various claims about the purported governmental interests supporting Section 504. First, in their response to contention interrogatories served by NAB, the Executive Branch Appellants (defendants at the time) claimed that Section 504 facilitates deterrence and detection of violations of the source-and-amount limitations on federal campaign contributions, informs the public of sources of support for candidates, and informs the public of sponsors of "electioneering communications." *See* 10 PCS/JG 206-07 (Response of United States and FCC to NAB's First Interrogatories, June 27, 2002). Later, presumably because those objectives could not possibly justify a statute requiring extensive disclosures not just about candidates but about issues of "national importance," the Executive Branch Appellants switched course and defended Section 504 on the ground that it would provide "public access to important information about political broadcasts," assist voters who have "difficulty identifying the true sponsors of issue ads," and combat "political corruption." *See*

Opening Brief of the United States and FCC at 218. Later still, the Executive Branch Appellants claimed that "public disclosure" is, in general, beneficial to the public and that it is useful to give the public "access to information" about requests made by individuals and groups who seek to purchase time (even if they do not) for advertising on television. *See* Opposition Brief of the United States and FCC at 134. Most recently, in their Jurisdictional Statement, the Executive Branch Appellants similarly claim that Section 504 "provides the public with access to information concerning the amounts that individuals and groups are prepared to spend to broadcast messages on political matters of national importance, as well as the sums actually spent on such broadcasts." *See* Executive Branch Appellants' Jurisdictional Statement at 29. The Executive Branch Appellants added that "[r]equiring disclosure of the identities of those who make requests, and the broadcasters' dispositions of the requests, also enables the public to evaluate whether broadcasters are processing requests in an evenhanded fashion." *Id.*

Nowhere in their Jurisdictional Statement, or in the record or briefs below, have the Executive Branch Appellants ever attempted to explain how such generalized interests satisfy the exacting scrutiny warranted by the First Amendment. Instead, the Executive Branch Appellants act as if compelled disclosure is presumptively valid as long as the public will theoretically benefit from the forced dissemination of information. That is plainly not the case. In *Buckley* v. *Valeo*, 424 U.S. 1 (1976), the Court held that laws compelling disclosure of campaign information must be reviewed under "exacting scrutiny." *Id.* at 64. To survive such scrutiny, the governmental interest in disclosure must be "substantial," *id.* at 80, and "sufficiently important to outweigh the possibility of infringement" of First Amendment rights.

Id. at 66. Likewise, as noted above, compelled disclosure of information about "noncandidate-focused communications" is, in the words of the district court, "even more difficult to justify." *See* Leon Memorandum Opinion at 113 (*citing Buckley* v. *American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999)); Memorandum Opinion of Judge Kollar-Kotelly at 614 (agreeing with Judge Leon). As the Court of Appeals held in *Buckley*, "the interest of a group engaging in nonpartisan discussion ascends to a high plane, while the governmental interest in disclosure correspondingly diminishes." *Buckley v. Valeo*, 519 F.2d 821, 873 (D.C. Cir. 1975), *aff'd in part and rev'd in part*, 424 U.S. 1 (1976).

Whatever tangential and unproven benefits the public might receive from knowing the "amounts that individuals and groups are prepared to spend to broadcast messages" or in learning whether broadcasters air advertisements in an "evenhanded" way, they surely cannot justify such deep intrusions into the rights of broadcasters and political speakers. This is particularly true where, as here, the record offers *no evidence* justifying the need for these purported benefits. *See* Memorandum Opinion of Judge Leon at 113-114 (finding that there is "no evidence suggesting, let alone proving, that purchasers have evaded, or will evade, [existing] disclosure requirements;" that "there is nothing in the record which demonstrates that broadcast licensees" have failed to act in an "even-handed fashion;" and that there is "no evidence" that special interest groups posed a threat justifying the requirements of Section 504); Memorandum Opinion of Judge Kollar-Kotelly at 614 (agreeing with Judge Leon).

Section 504 plainly fails to advance *any* discernible statutory or regulatory objective. There is no law, for instance (including BCRA itself), that prohibits adver-

tisers from inquiring of a broadcaster as to the availability of airtime. Nor is there a law (including BCRA itself) that limits the amount of speech on issues of national importance in which a speaker may engage. There is also no law (including BCRA itself) that requires broadcasters to ensure that the political advertisements they air are "even-handed" whether alone or in their totality. Section 504 thus differs fundamentally from the disclosure requirements already imposed on broadcasters by the FCC, *see* 47 C.F.R. §§ 73.1940-73.1944, which are closely tied to the enforcement of specific statutory provisions relating to legally qualified candidates. *See e.g.* 47 U.S.C. § 315(a) (requiring broadcasters to provide equal opportunities for candidates); 47 U.S.C. § 315(b) (requiring broadcasters to provide the lowest unit charge for candidates); 47 U.S.C. § 312(a)(7) (requiring reasonable access for federal candidates). Even in *Buckley*, the provisions of FECA requiring disclosure were upheld by the Court precisely because they were related to the goals of the statute and provided the means for enforcing specific statutory commands. *Buckley*, 424 U.S. at 68.

Beyond failing to advance any legitimate governmental interests, Section 504 imposes a wealth of burdensome and invasive requirements upon broadcasters and political speakers alike. Section 504 would "materially add to the amount of records NAB members must maintain," Memorandum Opinion of Judge Henderson, at 107, and, moreover, would force disclosure to the government of the names of individuals and groups engaged in advocacy about important, often controversial, social and political issues. That kind of forced disclosure is particularly intolerable under the First Amendment, especially where, as here, it is thoroughly unconnected to any valid governmental interest. *See N.A.A.C.P. v. State of Alabama*, 357 U.S. 449, 462

(1958) ("It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute . . . a restraint on freedom of association . . . ."). Indeed, Judges Leon and Kollar-Kotelly specifically found that Section 504 constitutes "an onerous collection and disclosure system on broadcast licensees; infringes the associational rights of groups and their members who engage in broadcasting; and potentially curtails political speech invaluable to an informed electorate." *See* Memorandum Opinion of Judge Leon at 114; Memorandum Opinion of Judge Kollar-Kotelly at 614 (agreeing with Judge Leon); *see also* Memorandum Opinion of Judge Henderson at 235-36.

Section 504 not only fails "exacting scrutiny," but also suffers from unconstitutional vagueness because its application may turn on one wholly ambiguous phrase. As noted above, the recordkeeping and disclosure requirements of Section 504 are triggered whenever broadcasters receive a request to air advertisements that relate "to any political matter of national importance." Judges Leon and Kollar-Kotelly, referring to this phrase, recognized that "the scope of [Section 504's] required disclosures is unclear because of the language's vagueness." *See* Memorandum Opinion of Judge Leon at 113, n.141; Memorandum Opinion of Judge Kollar-Kotelly at 614 (agreeing with Judge Leon). Likewise, Judge Henderson found that Section 504 "requires the personnel at NAB member stations to make what will often be a difficult and sensitive decision about whether a particular communication relates to a 'political matter of national importance,' a decision for which station sales personnel are not trained." *See* Memorandum Opinion of Judge Henderson at 107. Judge Henderson also found that "NAB members are likely to have difficulty discerning whether a particular communication relates to a 'political matter of national importance' and are therefore

likely to have difficulty discerning whether and under what circumstances recordkeeping and disclosure are required." *Id.* NAB members' inability to determine when the disclosure requirements of Section 504 will apply is particularly troublesome because a violation of the provision will subject broadcasters to substantial fines and/or burdensome inquiries from the FCC. Such vagueness is plainly intolerable under both the First Amendment and the Due Process Clause of the Fifth Amendment. *See e.g., Connally* v. *General Construction Co.*, 269 U.S. 385, 391 (1926); *Trinity Broadcasting of Florida, Inc.* v. *FCC*, 211 F.3d 618, 629, 631 (D.C. Cir. 2000) (vacating denial of broadcast license because regulation was "confus[ing]," "unclear," and failed to provide "fair notice" to broadcaster).

The Executive Branch Appellants (as well as certain other parties) assert that in the interest of expedience, this Court should note probable jurisdiction and schedule further briefing and argument on *every* issue considered by the district court. *See* Motion of the Appellees/ Cross-Appellants Federal Election Commission, et al. for Expedited Briefing Schedule, filed May 23, 2003 at 1. It is not at all clear how a determination *not* to engage in plenary review of a particular provision so plainly (and unanimously held) unconstitutional as Section 504 would *hinder* this Court's expedited review of the district court's decision. Instead, by taking Section 504 off the table at this early stage, the Court will only advance the quick resolution of this otherwise complex appeal.

Moreover, any argument that Section 504 should for some reason be treated in conjunction with the rest of BCRA is belied by the fact that the provision is barely related to, and in fact stands far apart from, the complex set of requirements contained in the rest of BCRA. Unlike the soft money rules of Title I and the ban on

so-called "electioneering communications" in Title II, Section 504 only applies to broadcasters and imposes no requirements on candidates, political parties, interest groups, labor unions or other corporations.[5]

As the district court made plain, Section 504 represents a broad and aimless infringement of the rights of broadcasters and political speakers alike. Because the district court's unanimous decision to strike down Section 504 was clearly correct, it is not only reasonable, but also prudent for this Court to conclude that the provision does not warrant further plenary review.

[5] As Judges Leon and Kollar-Kotelly observed, "Section 504 is different from the other disclosure provisions in BCRA in two important ways: (1) broadcast licensees, not the purchasers, are required to make the disclosures; and (2) the disclosures are required for broadcasts on 'political matters of national importance' as well as on federal candidates." *See* Memorandum Opinion of Judge Leon at 112; Memorandum Opinion of Judge Kollar-Kotelly at 614 (agreeing with Judge Leon); *see also* Memorandum Opinion of Judge Kollar-Kotelly at 11 (describing Section 504 as "not central to [BCRA's] core mission").

CONCLUSION

For the foregoing reasons, the Court should issue an Order summarily affirming so much of the district court's judgment as struck down Section 504 of BCRA as violative of the First Amendment.

Dated: June 2, 2003

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Supreme Court, U.S.
FILED
JUN 2 - 2003
OFFICE OF THE CLERK

No. 02-1676

In the Supreme Court of the United States

FEDERAL ELECTION COMMISSION, ET AL., APPELLANTS

v.

SENATOR MITCH MCCONNELL, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF OF APPELLANTS IN OPPOSITION TO MOTION OF APPELLEES EMILY ECHOLS, ET AL., FOR SUMMARY AFFIRMANCE

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In the Supreme Court of the United States

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v.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF OF APPELLANTS IN OPPOSITION TO MOTION OF APPELLEES EMILY ECHOLS, ET AL., FOR SUMMARY AFFIRMANCE

Section 318 of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 109, prohibits any person who is less than 18 years old from making a contribution to a candidate for federal office or to a committee of a political party. Appellees Emily Echols, et al., have moved for summary affirmance of the three-judge district court's holding in this case that Section 318 is unconstitutional. That motion should be denied. In light of minors' sharply reduced rights of political participation and control over property, and the government's compelling interest in preventing circumvention of valid existing limits on adult campaign contributions, Section 318 is constitutional. In any event, summary affirmance is inappropriate where, as here, a lower court has declared a provision of an Act of Congress to be invalid.

A. The Constitutional And Other Legal Rights Of Minors Are Substantially More Limited Than Those Of Adults

Appellees' legal analysis is premised on the view that minors "possess the same constitutional rights and liberties as adults, even if, in certain circumstances, such as the special case of public schools, the contours of those rights vary slightly from the rights of their adult counterparts." Mot. to Aff. 7. That contention reflects a profound misunderstanding of the legal and constitutional status of minors. "Traditionally at common law, and still today, unemancipated minors lack some of the most fundamental rights of self-determination—including even the right of liberty in its narrow sense, *i.e.*, the right to come and go at will." *Vernonia Sch. Dist. 47J* v. *Acton*, 515 U.S. 646, 654 (1995). In a host of circumstances, minors are routinely barred from activities in which adults would have a constitutional right to engage.

1. The most obvious and relevant example is voting. The Twenty-Sixth Amendment provides that "[t]he right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age." U.S. Const. Amend. XXVI, § 1. That constitutional provision distinguishes on its face between minors and adults, and it unmistakably implies that persons *less* than 18 years old *may* be denied the right to vote on the basis of age. In fact, "[n]o State has lowered its voting age below 18." *Thompson* v. *Oklahoma*, 487 U.S. 815, 839 (1988) (Appendix A to Opinion of Stevens, J.). The unquestioned validity of that age-based distinction is especially significant in view of the fundamental nature of the right to vote. See *Yick Wo* v. *Hopkins*, 118 U.S. 356, 370 (1886) (right to vote is "a fundamental political right, because preservative of all rights"); *Reynolds* v. *Sims*, 377 U.S. 533, 561-562 (1964) ("the right of

suffrage is a fundamental matter in a free and democratic society").[1]

2. It is likewise well-established that—even outside the distinctive environment of the public schools (see Mot. to Aff. 7, 10 n.8)—the First Amendment rights of minors are not coextensive with those of adults. In *Prince* v. *Massachusetts*, 321 U.S. 158 (1944), for example, this Court upheld the conviction of an adult who had allowed her minor ward to sell religious tracts on a public street in violation of a Massachusetts child labor statute. The Court recognized that "a statute or ordinance identical in terms * * *, except that it is applicable to adults or all persons generally, would be invalid." *Id.* at 167. The Court emphasized, however, that "the mere fact a state could not wholly prohibit this form of adult activity * * * does not mean it cannot do so for children." *Id.* at 168. It is similarly clear that minors may be prohibited from acquiring some (*e.g.*, sexually oriented) communicative materials that would be constitutionally protected if disseminated to adults. See, *e.g.*, *Ginsberg* v. *New York*, 390 U.S. 629, 636-637 (1968).

3. Both when the First Amendment was adopted and at the present time, minors have been subject to substantial restrictions on their ability to enter into binding contracts and to dispose of property. "The common law fixed the age of twenty-one as the age at which both men and women

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[1] By the same token, minors are uniformly precluded from jury service in this country, see *Thompson*, 487 U.S. at 840 (Appendix B to Opinion of Stevens, J.) ("In no State may anyone below the age of 18 serve on a jury."); 28 U.S.C. 1865(b)(1) (limiting jury service in the federal courts to citizens who are at least 18 years old), despite the fact that, "with the exception of voting, for most citizens the honor and privilege of jury duty is their most significant opportunity to participate in the democratic process," *Powers* v. *Ohio*, 499 U.S. 400, 407 (1991). Minors also generally lack legal capacity to sue in court, and indeed appellees' suit was filed on their behalf by next friends. See Per Curiam op. 1 (caption).

achieve full capacity to contract," though the age of majority has in virtually all States been lowered to 18. Restatement (Second) of Contracts § 14 cmt. a, at 37 (1981). It also remains the general rule that "[a] minor does not have capacity to make a gift." Restatement (Third) of Property, Wills and Other Donative Transfers § 8.2(b), at 137 (2003).[2] Section 318's ban on contributions to candidates and political parties is thus consistent with longstanding rules governing the economic activities of minors.

B. Section 318 Serves To Prevent Evasion By Adults Of BCRA's Limits On Individual Contributions To Candidates And Political Parties

Section 318 was added to BCRA in order "to prevent evasion of the contribution limits in the law." 148 Cong. Rec. S2145 (daily ed. Mar. 20, 2002) (Sen. McCain). Senator McCain explained that, under existing law, "wealthy individuals are easily circumventing contribution limits to both political candidates and parties by directing their children's contributions." *Ibid.* This Court has repeatedly sustained statutory limits on the financing of political campaigns based on similar anti-circumvention rationales. See, *e.g.*, *FEC* v. *Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 456 (2001) ("[A]ll members of the Court agree that circumvention is a valid theory of corruption."); *California Med. Ass'n* v. *FEC*, 453 U.S. 182, 198-199 (1981) (plurality opinion); *id.* at 203 (Blackmun, J., concurring); *Buckley* v. *Valeo*,

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[2] The Restatement further explains that "[a] purported gift made by a minor is voidable, not void. Before reaching majority, the minor may disaffirm the gift." Restatement (Third) of Property, Wills and Other Donative Transfers § 8.2(b), at 137 (2003). Under the logic of that rule, a minor who contributed money to a candidate for federal office might retain the right to "disaffirm" the contribution and to insist upon the return of the funds at any time before he reached majority if (for example) he became dissatisfied with the candidate's performance during the campaign or in office.

424 U.S. 1, 38 (1976) (upholding overall annual contribution limit of $25,000).

The district court's holding that Section 318 is unconstitutional was based in large part on the government's inability to identify a substantial number of specific instances in which adults were actually found to have circumvented limits on their own contributions by using minor children as surrogates. See Henderson op. 329; Leon op. 111; Kollar-Kotelly op. 612-613. Appellees argue in addition that any danger of circumvention is adequately addressed by the pre-existing statutory ban on making contributions in the name of another. Mot. to Aff. 15; see Henderson op. 330. Those contentions provide no basis for invalidating Section 318.

1. In assessing the constitutionality of campaign contribution limits and provisions designed to prevent the circumvention of those limits, this Court has consistently declined to "second-guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared." *FEC* v. *National Right to Work Comm.*, 459 U.S. 197, 210 (1982). In *Buckley*, for example, the Court assumed "that most large contributors do not seek improper influence over a candidate's position or an officeholder's action." 424 U.S. at 29. The Court nevertheless sustained the challenged $1000 limit on individual contributions to candidates for federal office, explaining that Congress was entitled to conclude that "the opportunity for abuse inherent in the process of raising large monetary contributions [should] be eliminated." *Id.* at 30. This Court has also squarely rejected the contention that the statutory ban on "earmarking" contributions represents the full extent of Congress's authority to combat circumvention of contribution limits. See *Colorado Republican*, 533 U.S. at 462 (exclusive reliance on "earmarking" ban "ignores the practical difficulty of identifying and directly combating circumvention under actual political

conditions"). Moreover, the Court has readily accepted the conclusion that Congress acted in order to prevent circumvention of the statutory contribution limits, even where the evidence of such intent has been less clear-cut than in the present case. See *id.* at 457 n.19.

Congress's adoption of an anti-circumvention rule is entitled to particular deference where, as here, a more individualized approach had been tried and found wanting. Before BCRA was enacted, Federal Election Commission (FEC) regulations permitted minors to contribute to candidates and political committees if, *inter alia*, "the decision to contribute [was] made knowingly and voluntarily by the minor child." 11 C.F.R. 110.1(i)(2). That standard, however, proved difficult to enforce in practice. Because contributors to candidates or political parties are not required to disclose their ages, potentially suspect contributions often could not readily be identified. See Kollar-Kotelly op. 611-612. "The evidence also shows that when the FEC has discovered donations given by young children which raised suspicions, their investigations were stymied by the refusal of parents to allow interviews, constitutional privacy concerns, and parental and legal counsel influence." *Id.* at 612. In explaining the need for a categorical rule, Senator McCain observed that the FEC had "notified Congress of its difficulties in enforcing the current provision." 148 Cong. Rec. at S2145; see *id.* at S2146 (Senator McCain notes that "the existing, more limited, FEC regulation has failed to prevent" circumvention of contribution limits). Although Section 318 goes further than the legislative proposal previously advanced by the FEC, see *id.* at S2148 ("The commission recommends that Congress establish a presumption that contributors below age 16 are not making contributions on their own behalf."), the agency's experience supports Congress's judgment that a prophylactic rule is necessary, and it

belies appellees' suggestion that prior law adequately addressed the danger of circumvention.

2. Appellees' demand for more precise tailoring is particularly unwarranted in light of the nature of the classification involved here. The line between minority and adulthood is routinely used to determine eligibility for the exercise even of fundamental rights (see pp. 2-3, *supra*), without the need or opportunity for individualized inquiry into a particular minor's qualifications. Indeed, Section 318 is if anything *more* closely tailored to the relevant government interest than are many other age classifications (*e.g.*, laws categorically forbidding minors from serving on juries) of unquestioned validity. Age is at best a rough proxy for maturity or judgment, but status as a minor is (as a result of background legal principles that are unchallenged here) a highly accurate standard for identifying those persons who are legally subject to the direction of others. Cf. *Vernonia Sch. Dist.*, 515 U.S. at 654 (noting that unemancipated minors "are subject, even as to their physical freedom, to the control of their parents or guardians.").

Although an individual minor child may be *allowed* by his parents to make campaign contributions based on the child's own political preferences, minors have no *right* to alienate property free from parental control, and as a class they are consequently much more susceptible than are adult donors to exploitation as conduits for unlawful contributions. The distinct legal status of minors fully supports Congress's determination that "allowing them to contribute to candidates [and political parties] presents too great a risk of abuse," 148 Cong. Rec. at S2146 (Sen. McCain), notwithstanding the limited evidence of instances of proven circumvention. Cf. *Nixon* v. *Shrink Mo. Gov't PAC*, 528 U.S. 377, 391 (2000) ("The quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the

justification raised."). Moreover, Congress's judgment is further supported by restrictions on the franchise itself. While individuals who are unable to vote may nonetheless have a significant interest in associating themselves with a particular candidate, Congress may recognize their disability from voting as a factor in identifying minors as a class of persons who are particularly susceptible to misuse as conduits for campaign funds.[3]

3. Even as applied to individuals whose intended campaign contributions are in fact free from parental coercion or control, Section 318 imposes minimal burdens on minors' rights of political expression. As Senator McCain emphasized, Section 318 leaves minors "free to volunteer on campaigns and express their views through speaking and writing." 148 Cong. Rec. at S2146. Minors may also contribute to candidates for state office (subject to applicable state laws) and to non-party political committees. Section 318 prohibits minors from employing only a single mode of

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[3] It could not reasonably be argued that babies or toddlers are capable of knowingly and voluntarily making campaign contributions (or that such children are typically given exclusive control over substantial monetary assets). Congress therefore must surely have authority to identify *some* age below which individuals will be barred from contributing money to candidates or political parties. "[W]hen it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless [the Court] can say that it is very wide of any reasonable mark." *Buckley*, 424 U.S. at 83 n.111; see *id.* at 30 (Congress's choice of an appropriate contribution limit is entitled to judicial deference). Congress's decision to draw the line at age 18 is wholly reasonable, given that (a) 18 is the age at which individuals in virtually all States acquire legal capacity to make contracts and dispose of property, (b) even 17-year-olds remain legally subject to the direction of their parents and are thus substantially more susceptible to exploitation for conduit contributions than are 18-year-olds, and (c) the Constitution itself distinguishes between 17- and 18-year-olds with respect to the right to vote.

political expression—namely, "the undifferentiated, symbolic act of contributing," *Buckley*, 424 U.S. at 21, to a federal candidate or political party. Section 318's ban on contributions to specific candidates for whom minors cannot legally vote thus leaves open numerous avenues for minors to impact the underlying issues that may be affected by the election. In light of the longstanding general restrictions on the ability of minors to enter into contracts, to dispose of property, and to vote (see pp. 2-4, *supra*), a law targeted solely at transfers of money does not significantly burden any right that minors have traditionally been understood to possess.[4]

C. Summary Affirmance Is Inappropriate

Appellees identify no case in which this Court has summarily affirmed a lower court decision striking down a provision of an Act of Congress. Respect for a coordinate Branch strongly suggests that such a course would be appropriate, if at all, only in extraordinary circumstances. Although appellees assert that the relevant constitutional principles are "well-settled in the precedents of this Court" (Mot. to Aff. 1), they cite no decision that has recognized a constitutional right for minors to transfer money or property under any circumstances, let alone a right to contribute to a candidate or political party. Nor do they identify any case in which this Court has invalidated a federal restriction on

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[4] Although Section 318's absolute ban on campaign contributions by minors is concededly more burdensome than a limit on the amount that may be contributed, Congress has categorically prohibited contributions by other categories of potential donors as well. See 2 U.S.C. 441e (foreign nationals). A contribution ban that applied to an unduly broad category of potential donors might threaten the distinct First Amendment interests of candidates and parties in "amassing the resources necessary for effective advocacy." *Buckley*, 424 U.S. at 21; see *Shrink Mo.*, 528 U.S. at 397. Appellees do not and could not plausibly maintain, however, that Section 318 is likely to have that effect.

contributions to candidates or political parties. Quite apart from the reasons set forth above for sustaining Section 318 against constitutional attack, the absence of squarely controlling precedent in appellees' favor is by itself a sufficient basis for denial of appellees' motion.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted.

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JUNE 2003

REFER TO 02-1674, MCCONNELL V. FEDERAL ELECTION COMMITTEE, FOR DOCUMENTS LISTED ON DOCKET BUT NOT ON FICHE

Docket for 02-1733
No. 02-1733 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Right to Life Committee, Inc., et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1734
No. 02-1734 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: American Civil Liberties Union, Appellant v. Federal Election Commission, et al. Docketed: May 29, 2003 Lower

Docket for 02-1753
No. 02-1753 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1755, 02-1756 Title: California Democratic Party, et al., Appellants v. Federal Election Commission, et al. Docketed: June 2, 1003

Docket for 02-1755
No. 02-1755 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1756 Title: American Federation of Labor and Congress of Industrial Organizations, et al., Appellants v. Federal Election

Docket for 02-1756
No. 02-1756 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755 Title: Chamber of Commerce of the United States, et al., Appellants v. Federal Election Commission, et al. Docketed:

Docket for 02-1675
No. 02-1675 Status: GRANTED Vide 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Rifle Association, et al., Appellants v. Federal Election Commission, et al. Docketed: May 15, 2003

Docket for 02-1676
No. 02-1676 Status: GRANTED Vide 02-1675, 02-1674, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Federal Election Commission, et al., Appellants v. Mitch McConnell, United States Senator, et al. Docketed: May

Docket for 02-1702
No. 02-1702 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: John McCain, United States Senator, et al., Appellants v. Mitch McConnell, United States Senator, et al.

Docket for 02-1740

No. 02-1740 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1747, 02-1753, 02-1755, 02-1756 Title: Victoria Jackson Gray Adams, et al., Appellants v. Federal Election Commission, et al. Docketed: May 30, 2003

Docket for 02-1747

No. 02-1747 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1753, 02-1755, 02-1756 Title: Ron Paul, United States Congressman, et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1727

No. 02-1727 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Republican National Committee, et al., Appellants v. Federal Election Commission, et al. Docketed: May 28, 2003

REFER TO 02-1674, MCCONNELL V. FEDERAL ELECTION COMMITTEE, FOR DOCUMENTS LISTED ON DOCKET BUT NOT ON FICHE

Docket for 02-1733
No. 02-1733 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Right to Life Committee, Inc., et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1734
No. 02-1734 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: American Civil Liberties Union, Appellant v. Federal Election Commission, et al. Docketed: May 29, 2003 Lower

Docket for 02-1753
No. 02-1753 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1755, 02-1756 Title: California Democratic Party, et al., Appellants v. Federal Election Commission, et al. Docketed: June 2, 1003

Docket for 02-1755
No. 02-1755 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1756 Title: American Federation of Labor and Congress of Industrial Organizations, et al., Appellants v. Federal Election

Docket for 02-1756
No. 02-1756 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755 Title: Chamber of Commerce of the United States, et al., Appellants v. Federal Election Commission, et al. Docketed:

Docket for 02-1675
No. 02-1675 Status: GRANTED Vide 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Rifle Association, et al., Appellants v. Federal Election Commission, et al. Docketed: May 15, 2003

Docket for 02-1676
No. 02-1676 Status: GRANTED Vide 02-1675, 02-1674, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Federal Election Commission, et al., Appellants v. Mitch McConnell, United States Senator, et al. Docketed: May

Docket for 02-1702
No. 02-1702 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: John McCain, United States Senator, et al., Appellants v. Mitch McConnell, United States Senator, et al.

Docket for 02-1740

No. 02-1740 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1747, 02-1753, 02-1755, 02-1756 Title: Victoria Jackson Gray Adams, et al., Appellants v. Federal Election Commission, et al. Docketed: May 30, 2003

Docket for 02-1747

No. 02-1747 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1753, 02-1755, 02-1756 Title: Ron Paul, United States Congressman, et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1727

No. 02-1727 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Republican National Committee, et al., Appellants v. Federal Election Commission, et al. Docketed: May 28, 2003

REFER TO 02-1674, MCCONNELL V. FEDERAL ELECTION COMMITTEE, FOR DOCUMENTS LISTED ON DOCKET BUT NOT ON FICHE

Docket for 02-1733
No. 02-1733 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Right to Life Committee, Inc., et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1734
No. 02-1734 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: American Civil Liberties Union, Appellant v. Federal Election Commission, et al. Docketed: May 29, 2003 Lower

Docket for 02-1753
No. 02-1753 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1755, 02-1756 Title: California Democratic Party, et al., Appellants v. Federal Election Commission, et al. Docketed: June 2, 1003

Docket for 02-1755
No. 02-1755 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1756 Title: American Federation of Labor and Congress of Industrial Organizations, et al., Appellants v. Federal Election

Docket for 02-1756
No. 02-1756 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755 Title: Chamber of Commerce of the United States, et al., Appellants v. Federal Election Commission, et al. Docketed:

Docket for 02-1675
No. 02-1675 Status: GRANTED Vide 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Rifle Association, et al., Appellants v. Federal Election Commission, et al. Docketed: May 15, 2003

Docket for 02-1676
No. 02-1676 Status: GRANTED Vide 02-1675, 02-1674, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Federal Election Commission, et al., Appellants v. Mitch McConnell, United States Senator, et al. Docketed: May

Docket for 02-1702
No. 02-1702 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: John McCain, United States Senator, et al., Appellants v. Mitch McConnell, United States Senator, et al.

Docket for 02-1740

No. 02-1740 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1747, 02-1753, 02-1755, 02-1756 Title: Victoria Jackson Gray Adams, et al., Appellants v. Federal Election Commission, et al. Docketed: May 30, 2003

Docket for 02-1747

No. 02-1747 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1753, 02-1755, 02-1756 Title: Ron Paul, United States Congressman, et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1727

No. 02-1727 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Republican National Committee, et al., Appellants v. Federal Election Commission, et al. Docketed: May 28, 2003

REFER TO 02-1674, MCCONNELL V. FEDERAL ELECTION COMMITTEE, FOR DOCUMENTS LISTED ON DOCKET BUT NOT ON FICHE

Docket for 02-1733
No. 02-1733 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Right to Life Committee, Inc., et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1734
No. 02-1734 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: American Civil Liberties Union, Appellant v. Federal Election Commission, et al. Docketed: May 29, 2003 Lower

Docket for 02-1753
No. 02-1753 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1755, 02-1756 Title: California Democratic Party, et al., Appellants v. Federal Election Commission, et al. Docketed: June 2, 1003

Docket for 02-1755
No. 02-1755 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1756 Title: American Federation of Labor and Congress of Industrial Organizations, et al., Appellants v. Federal Election

Docket for 02-1756
No. 02-1756 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755 Title: Chamber of Commerce of the United States, et al., Appellants v. Federal Election Commission, et al. Docketed:

Docket for 02-1675
No. 02-1675 Status: GRANTED Vide 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Rifle Association, et al., Appellants v. Federal Election Commission, et al. Docketed: May 15, 2003

Docket for 02-1676
No. 02-1676 Status: GRANTED Vide 02-1675, 02-1674, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Federal Election Commission, et al., Appellants v. Mitch McConnell, United States Senator, et al. Docketed: May

Docket for 02-1702
No. 02-1702 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: John McCain, United States Senator, et al., Appellants v. Mitch McConnell, United States Senator, et al.

Docket for 02-1740

No. 02-1740 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1747, 02-1753, 02-1755, 02-1756 Title: Victoria Jackson Gray Adams, et al., Appellants v. Federal Election Commission, et al. Docketed: May 30, 2003

Docket for 02-1747

No. 02-1747 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1753, 02-1755, 02-1756 Title: Ron Paul, United States Congressman, et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1727

No. 02-1727 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Republican National Committee, et al., Appellants v. Federal Election Commission, et al. Docketed: May 28, 2003

REFER TO 02-1674, MCCONNELL V. FEDERAL ELECTION COMMITTEE, FOR DOCUMENTS LISTED ON DOCKET BUT NOT ON FICHE

Docket for 02-1733
No. 02-1733 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Right to Life Committee, Inc., et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1734
No. 02-1734 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: American Civil Liberties Union, Appellant v. Federal Election Commission, et al. Docketed: May 29, 2003 Lower

Docket for 02-1753
No. 02-1753 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1755, 02-1756 Title: California Democratic Party, et al., Appellants v. Federal Election Commission, et al. Docketed: June 2, 1003

Docket for 02-1755
No. 02-1755 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1756 Title: American Federation of Labor and Congress of Industrial Organizations, et al., Appellants v. Federal Election

Docket for 02-1756
No. 02-1756 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755 Title: Chamber of Commerce of the United States, et al., Appellants v. Federal Election Commission, et al. Docketed:

Docket for 02-1675
No. 02-1675 Status: GRANTED Vide 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Rifle Association, et al., Appellants v. Federal Election Commission, et al. Docketed: May 15, 2003

Docket for 02-1676
No. 02-1676 Status: GRANTED Vide 02-1675, 02-1674, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Federal Election Commission, et al., Appellants v. Mitch McConnell, United States Senator, et al. Docketed: May

Docket for 02-1702
No. 02-1702 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: John McCain, United States Senator, et al., Appellants v. Mitch McConnell, United States Senator, et al.

Docket for 02-1740

No. 02-1740 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1747, 02-1753, 02-1755, 02-1756 Title: Victoria Jackson Gray Adams, et al., Appellants v. Federal Election Commission, et al. Docketed: May 30, 2003

Docket for 02-1747

No. 02-1747 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1753, 02-1755, 02-1756 Title: Ron Paul, United States Congressman, et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1727

No. 02-1727 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Republican National Committee, et al., Appellants v. Federal Election Commission, et al. Docketed: May 28, 2003